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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. ~~800~~ 86

MICHIGAN WISCONSIN PIPE LINE COMPANY,
Appellant,

VERSUS

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

JURISDICTIONAL STATEMENT

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February, 1957.

ITTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 5-8750

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In the
Supreme Court of the United States
OCTOBER TERM, 1956

No. .....

MICHIGAN WISCONSIN PIPE LINE COMPANY,
Appellant,

VERSUS

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

JURISDICTIONAL STATEMENT

Appellant submits herewith its statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review a final order of the Supreme Court of the State of Oklahoma entered in Cause No. 35732 purporting to carry out the mandate of this Court issued in No. 321, October Term, 1954.

THE ORDER BELOW

The order complained of (no opinion was written) is notofficially reported. A true and correct copy thereof is attached hereto as Appendix A.

JURISDICTION

This case was first here at the October Term, 1954, on appeal from a decision of the Supreme Court of Oklahoma affirming an order of the Corporation Commission of Oklahoma which purported to fix a minimum price for the sale of natural gas produced from the Guymon-Hugoton Field in Oklahoma. The cause was reversed *per curiam* (349 U.S. 908) on the authority of a companion case, *Natural Gas Pipeline Company v. Panoma Corporation,* 349 U.S. 44.

This Court's order of reversal was entered April 18, 1955. Nearly a year and a half later, on October 8, 1956, the Supreme Court of Oklahoma entered its order pursuant to this Court's mandate, which is the order appealed from herein (Appendix A). Petition for rehearing filed by Phillips Petroleum Company was denied by the Supreme Court of Oklahoma on December 4, 1956, with one judge dissenting. Notice of appeal to this Court was filed with the Clerk of the Supreme Court of Oklahoma on January 4, 1957.

The jurisdiction of this Court to review the final order and judgment of the Supreme Court of Oklahoma by appeal is conferred by 28 U.S.C., Sec. 1257(2). The instant appeal involves the construction and effect to be given the mandate of this Court in the prior appeal, 349 U.S. 908. In that case, jurisdiction on appeal under 28 U.S.C., Sec. 1257(2) was founded upon the fact that the Supreme Court of Oklahoma had upheld the validity of the minimum price order of the Corporation Commission of Oklahoma, a "statute of a state", against the claim that the order was repugnant to a statute

of the United States, specifically the Natural Gas Act, 15 U.S.C., Sec. 717, *et seq.*

It is well settled that "this court has power to do all that is necessary to give effect to its judgments * * *. This appeal rests on the same foundation as did the first." *Baltimore & O. R. Co.* v. *United States*, 279 U.S. 781, 785; *Georgia R. & E. Co.* v. *Decatur*, 297 U.S. 620; *Stanley* v. *Schwalby*, 162 U.S. 255.

THE QUESTION PRESENTED

Whether sales of natural gas in interstate commerce for resale for ultimate public consumption are subject to state minimum price regulations if such sales are made at or near the wellhead rather than at the outlet of a gasoline plant after completion of gathering and processing, and whether the Supreme Court of Oklahoma in limiting its reversal of the order of the Oklahoma Corporation Commission to sales of the latter type properly construed and gave effect to the decision and mandate of this Court.

THE STATUTE INVOLVED

The statute here involved, a legislative order of the Corporation Commission of the State of Oklahoma, a true and correct copy of which is attached hereto as Appendix B, among other things provides:

> "That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit

from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized."

STATEMENT

Michigan Wisconsin is a natural gas pipeline company holding certificates of convenience and necessity issued by the Federal Power Commission under the Natural Gas Act, 15 U.S.C., Sec. 717, *et seq.* It owns and operates a pipeline system which originates in Texas and terminates at various points in Michigan and Wisconsin, where it sells gas to local distribution companies for resale to domestic and industrial customers.

Substantially all of the gas transported by Michigan Wisconsin is purchased by it from Phillips Petroleum Company at the outlet of the latter's gasoline plant located in Hansford County, Texas. Phillips owns and operates a number of gathering lines through which it brings gas from individual wells or groups of wells located in both Texas and Oklahoma to its gasoline plant. There, gasoline and other liquid products are removed from the gas by Phillips, and the residue gas is then sold to Michigan Wisconsin.

By its Order No. 26096 issued July 29, 1952, the Corporation Commission of Oklahoma fixed a minimum price of 9.8262 cents per mcf for gas produced in Oklahoma if sold at the wellhead and set the same price for residue gas sold after gathering and processing of such gas for the extraction of gasoline and other liquefiable hydrocarbons. The Supreme Court of Oklahoma affirmed the order in its entirety. Appellant and Natural Gas Pipeline Company of

America appealed to this Court on the ground that state regulation of sales of natural gas in interstate commerce for resale was invalid as in conflict with the jurisdiction over such sales vested in the Federal Power Commission by the Natural Gas Act. This Court so held, reversing the judgment of the Supreme Court of Oklahoma. *Natural Gas Pipeline Company* v. *Panoma Corporation*, 349 U.S. 44.

Appellant and Natural Gas Pipeline Company of America both purchase residue gas at the outlet of gasoline plants rather than at the wellhead. This Court drew no distinctions between such sales, however, and concluded that state minimum price regulations are invalid as applied to any sale of gas in interstate commerce for resale. Upon remand of these causes, the Supreme Court of Oklahoma nevertheless distinguished between wellhead sales and sales of residue gas, holding only that the price fixing order of the Corporation Commission was "reversed, set aside and held for naught *in so far as sales of residue gas by Phillips Petroleum Company and its successors to Michigan Wisconsin Pipe Line Company under existing gas purchase contracts are concerned*" (Appendix A). This order thus has the effect of leaving the price fixing order of the Corporation Commission in force as applied to wellhead sales, while invalidating the order as applied to sales of residue gas at the outlet of gasoline plants.

The Oklahoma Supreme Court's bifurcation of this Court's judgment is of great concern to the natural gas industry generally and to Michigan Wisconsin in particular. Of the gas Michigan Wisconsin purchases from Phillips, a substantial portion is first purchased by Phillips from inde-

pendent producers at the wellhead, while the remainder is produced by Phillips from its own wells.* Under the state court's order here on appeal, Phillips may be required to pay the state-fixed minimum price for gas purchased from other producers, whereas no such regulation is applicable with respect to gas produced from its own wells.

Michigan Wisconsin, in turn, is affected in two ways. First, if state-imposed minimum price regulations are applicable to Phillips' purchases from independent producers, Phillips has claimed the right to cancel certain of its contracts with producers covering such purchases, thereby depriving Michigan Wisconsin of important supplies of gas.** Second, if Oklahoma's minimum price regulations are upheld as applied to wellhead sales, such prices would necessarily be reflected in Phillips' cost of sales, which in turn may affect the rates, it is entitled to charge Michigan Wisconsin and other pipeline companies.

THE FEDERAL QUESTION IS SUBSTANTIAL

Appellant submits that the clear intention of this Court, as stated in its *per curiam* opinion in *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44, was to disapprove state price-fixing regulations in areas of Federal Power Com-

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* This Court pointed out in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, which concerned the identical sales here involved, that Phillips produces about 50 per cent of the gas it resells to pipeline companies and purchases the remainder from other producers.

** To avoid that possibility, Michigan Wisconsin and Phillips entered into an escrow arrangement in 1952, whereby Michigan Wisconsin deposited sums equal to the additional amounts Phillips must pay one of its large suppliers if the Oklahoma minimum price order is upheld as to wellhead sales. Substantial amounts are now accrued in this escrow account.

mission jurisdiction under the Natural Gas Act. This Court said flatly:

> "We held in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, that such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission. The *Phillips* case, therefore, controls this one." 349 U.S. at 44-45.

The order of the Supreme Court of Oklahoma, which has the effect of continuing to uphold state regulation of sales of natural gas in interstate commerce *if made at the wellhead*, falls far short of carrying out this Court's mandate.

In the *Phillips* case, this Court held that sales of natural gas in interstate commerce for resale, wherever such sales occur, are subject to Federal Power Commission jurisdiction. For example, in commenting upon Phillips' attempt to distinguish *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, on the ground that Interstate had transported the gas in its pipelines after completion of gathering and before sale, this Court said:

> "This Court, however refused to rely on such refinements, and instead based its decision in Interstate on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption." 347 U.S. at 680-681.

This Court then concluded:

> "* * * that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in inter-

state commerce and whether occurring before, during or after transmission by an interstate pipeline company." Id., at 682.

There is no question that sales at the wellhead to companies such as Phillips, which in turn sell to interstate pipeline companies, are sales for resale in interstate commerce within the specific terms of the Natural Gas Act. This is best illustrated by the restricted application placed upon *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, by this Court in subsequent decisions. In the *Cities Service* case, a prior order of the Oklahoma Corporation Commission fixing the price of natural gas sold at the wellhead was upheld against the claim that state regulation was precluded by the Commerce Clause alone. In the *Phillips* case, this Court pointed out that, while the Oklahoma regulation of wellhead sales applied "to sales of natural gas in interstate commerce", the appellants in *Cities Service* "did not assert a possible conflict with Federal authority under the Natural Gas Act", and the question of such conflict was therefore specifically reserved (347 U.S. at 684-685). And in the recent *Natural Gas Pipeline* case, this Court similarly disposed of the *Cities Service* case, stating:

> We disagree with the contention of the respondents that *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U.S. 179, 71 S. Ct. 215, 95 L. Ed. 190, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 71 S. Ct. 221, 95 L. Ed. 204, are applicable here. In those cases we were dealing with constitutional questions and not the construction of the Natural Gas Act, 15 U.S.C.A., Sec. 717 *et seq.* The latter question was specifically not passed upon in those cases." 349 U.S. at 45.

In short, this Court has already held, referring specifically to wellhead sales of natural gas, that they are "sales of natural gas in interstate commerce", and has distinguished the *Peerless* case, which upheld state regulation of such sales, on the sole ground that the application of the Natural Gas Act had not been argued in that case. To hold, as did the Supreme Court of Oklahoma in the order now on appeal, that state regulation of sales of natural gas in interstate commerce is still permissible is to ignore completely the rationale of this Court's decisions in the *Phillips* and *Natural Gas Pipeline* cases.

The fact that state regulation of wellhead sales contravenes the Natural Gas Act is emphasized by the fact that such sales are currently being regulated by the Federal Power Commission. As this Court knows judicially, the Commission has issued a series of orders (Nos. 174, 174-A and 174-B)* establishing regulatory rules which are applicable to sales of natural gas in interstate commerce by independent producers without regard to the time or place of such sales. Thus, if effect is given both to the order of the Supreme Court of Oklahoma and to the existing regulations of the Federal Power Commission, State and Federal agencies would both be attempting to regulate the price of the same sale. The legal and practical impossibility of any such dual authority was the precise piont argued in the *Natural Gas Pipeline* case and decided by this Court on the authority of *Phillips*.**

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* 19 Federal Register, 4534 *et seq.*, 5081 *et seq.*, and 8807 *et seq.*

** In the *Phillips* case this Court had stated: "* * * the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control." 347 U.S. at 681.

The United States Court of Appeals for the Third Circuit has already interpreted this Court's decision in the *Phillips* case as sustaining the Federal Power Commission's implementary action. In *J. M. Huber Corporation* v. *Federal Power Commission*, 236 F.2d 550, *cert. den.*, 352 U.S. 971, Huber, a producer of natural gas, gathered such gas from its wells, selling the gas to an interstate pipeline company at a central point. After the *Phillips* decision, Huber attempted to cancel its sale contract with the pipeline company under an "escape clause" permitting cancellation in the event a government regulatory body should establish a purchase price less than that specified in the contract. The Federal Power Commission refused to allow Huber to abandon its service to the pipeline company, and its action was affirmed by the Court. In rejecting Huber's contention that its sales were exempt from Federal regulation under the "production and gathering" exemption of the Natural Gas Act, the Court of Appeals stated:

> "The *Phillips* decision makes it very clear that Huber is a natural gas company directly within the jurisdiction of the Commission under the Act by reason of its sale of natural gas to Northern, admittedly a sale in interstate commerce of natural gas for resale." 236 F.2d at 554.

Notwithstanding this Court's decisions in the *Phillips* and *Natural Gas Pipeline Company* cases, and that of the Court of Appeals for the Third Circuit in the *Huber* case, the courts of Oklahoma and, more recently, of Kansas, have persisted in sustaining state minimum price regulation of interstate sales of natural gas. On December 8, 1956, the

Supreme Court of Kansas upheld the validity of a price fixing order of the Kansas Corporation Commission with respect both to sales of residue gas and to wellhead sales which were admittedly "sales in interstate commerce of natural gas for resale." *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 304 P.2d 528, 533. This decision, like the order of the Supreme Court of Oklahoma here involved, is squarely contrary to this Court's decisions in the *Phillips* and *Natural Gas Pipeline Company* cases.* An appeal from the decision of the Kansas Court has recently been docketed in this Court under No. 797. Since the Federal questions involved are very largely identical, it is respectfully suggested that this appeal and that filed by Cities Service Gas Company should be considered together.

CONCLUSION

Appellant respectfully submits that the order here involved reflects a complete misconception of the principles announced by this Court in the *Phillips* case and in this case on the former appeal; that the order falls far short of complying with and giving effect to the decision and mandate of this Court, particularly in the light of the principles

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* The state courts' rulings are also contrary to the decision in *State Corporation Commission of Kansas* v. *Federal Power Commission* (8th Cir.), 206 F.2d 690, 703. There, a pipeline company's attempt to attribute a value of 8 cents per mcf, the minimum price fixed by the Kansas Commission, to its own gas production for rate purposes was rejected by the Federal Power Commission, whose ruling was affirmed by the Court of Appeals.

enunciated in the *Phillips* case on which the former reversal in this case was bottomed; and that it has been demonstrated that this appeal presents a substantial Federal question which should be considered and disposed of on the merits.

Respectfully submitted,

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February, 1957.

APPENDIX A

FILED
in Supreme Court
of Oklahoma
OCT 8 - 1956
ANDY PAYNE
Clerk

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Michigan Wisconsin Pipe Line Company, Plaintiff in Error,	)	
v.	)	No. 35,732
The Corporation Commission of the State of Oklahoma, *et al.*, Defendants in Error.	)	

ORDER

Now on this 8 day of October, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this court;

NOW, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals to this court and the Supreme Court of the United States, be and the same is hereby reversed, set aside and held for naught in so far as sales of residue gas by Phillips Petroleum Company and its successors to Michigan-Wisconsin Pipe Line Company under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the mandate of that court in the amount of $100.00.

/s/ N. B. Johnson.
Chief Justice

APPENDIX B

(COPY)

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, FOR AN ORDER DETERMINING THE MINIMUM PRICE AT WHICH GAS PRODUCED FROM THE GUYMON-HUGOTON FIELD MAY BE FIRST PURCHASED OR SOLD	) CAUSE CD) No. 3628)) Order) No. 26096)

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, a.m., at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclusion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Rizley, Tryon and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company, C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. Murray Robinson and Dale & Dale appeared for applicant; L. T. Cramer appeared for Office of Price Stablization; Joe Rolston and R. R. McCracken appeared for Cities Service

Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29 day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

FINDINGS

1. That this is an application of certain mineral owners in Texas County, Oklahoma, for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabilization appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1054, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds

absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource, to-wit: natural gas;

b. Actual physical waste of natural gas;

c Loss to the royalty owners in said field;

d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;

e. Inequitable taking of natural gas from the common source of supply involved.

f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on

the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia. at a temperature of 60°F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Gumon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount

realized for gas by producers operating gathering and processing plants.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic feet.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60°F.).

4. This order shall become and be effective the 1st day of August, 1952.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29 day of July, 1952.

CORPORATION COMMISSION OF OKLAHOMA

S/ Reford Bond	Chairman
S/ Ray O. Weems	Vice-Chairman
S/ Ray C. Jones	Commissioner

ATTEST:

S/ Tom McMurray
Secretary

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Office - Supreme Court, U.S.
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MAY 13 1957
JOHN T. FEY, Clerk

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. ~~809~~ 86

MICHIGAN WISCONSIN PIPE LINE COMPANY,
Appellant,
VERSUS
CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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May, 1957.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 8-8780

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In the
Supreme Court of the United States
OCTOBER TERM, 1956

No. 809

MICHIGAN WISCONSIN PIPE LINE COMPANY,
Appellant,

VERSUS

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF IN OPPOSITION TO MOTION TO DISMISS

STATEMENT

In its motion appellee, Corporation Commission of the State of Oklahoma, recognizes the price fixing order of the Corporation Commission for what it is—an attempt by the State of Oklahoma to regulate the price of "sales" of natural gas. No question as to the applicability of the "production and gathering" exception contained in the Natural Gas Act is raised. In such circumstances, the question presented by this appeal is whether the Supreme Court of Oklahoma, in purporting to carry out the mandate and

decree of this Court, imposed unwarranted restrictions thereon by limiting its reversal of the Commission's order to sales of residue gas, thereby leaving the order in effect in so far as sales of natural gas at or near the wellhead are concerned.

In this brief, we shall discuss in the order presented by appellee the points relied upon in support of the motion to dismiss.

I.

Appellant is aggrieved by the order of the Oklahoma Court, and there is a very real controversy involving a substantial federal question in which appellant has a justiciable interest.

The claim of appellee that Michigan Wisconsin is not "aggrieved" by the limitation in the Oklahoma Supreme Court's order of reversal is made moot by the fact that Phillips Petroleum Company has now filed its appeal in this Court from that order (No. 954, October Term, 1956). Since Michigan Wisconsin is properly named as an appellee in that appeal, it is a proper party before this Court in any event. Whether its contentions are presented as an appellant in this case or as an appellee in No. 954 is unimportant. There is no question in either event that the issues raised are properly before the Court, and that Michigan Wisconsin is a proper party.

It is perfectly clear, moreover, that Michigan Wisconsin is aggrieved by action of the Supreme Court of Oklahoma. It was pointed out in Michigan Wisconsin's Jurisdictional Statement that if the wellhead portion of the

order were upheld, Phillips might cancel its contracts with certain producers, thereby depriving Michigan Wisconsin of important gas supplies. Appellee argues that Phillips may not abandon service to Michigan Wisconsin without Federal Power Commission approval. It is quite true that a natural gas company such as Phillips cannot abandon service of gas which it has available for sale. But if Phillips cancels its contracts with the producers from which it purchases at the wellhead, as it clearly has power to do, such gas would not be available for sale to Michigan Wisconsin, and the Federal Power Commission would be powerless to require Phillips to maintain its present rate of deliveries. Thus, the threat of reduction in its gas supply makes Michigan Wisconsin an intensely interested party in this litigation.

Nor does appellee successfully meet the further point that, if the price Phillips must pay to producers is artificially increased by the Oklahoma Corporation Commission, that increase will ultimately be passed on to Michigan Wisconsin. While Phillips may not unilaterally increase its contract price to Michigan Wisconsin, the Federal Power Commission, in determining Phillips' just and reasonable rates, might take into account the actual cost to Phillips of its gas purchases. Thus, whenever Phillips' rates are determined by the Federal Power Commission, the minimum price fixed by the Oklahoma Commission could become an element in the rate which Michigan Wisconsin must pay.

The claim that Michigan Wisconsin is not aggrieved by the order here sought to be reviewed is thus without the

slightest merit. Cf. *Columbia Broadcasting System, Inc.* v. *United States*, 316 U.S. 407; *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U.S. 470. Its interests are directly and vitally affected.

II.

Appellant timely and properly raised the question as to wellhead sales and the final order of the Oklahoma Court passed thereon.

It is not contended that appellant did not, after receipt by the Oklahoma court of the mandate of this Court, timely and properly urge that the decision in this case adjudicated the invalidity of the Commission order with respect to wellhead sales of natural gas made in interstate commerce. At the first opportunity, appellant filed its motion in the Oklahoma court in which it prayed "that a proper order be entered herein reversing, setting aside and vacating Order No. 26096 of the Corporation Commission of the State of Oklahoma * * *."

Appellee argues that the question of the validity of the wellhead portion of the State Commission's order was not involved in Michigan Wisconsin's first appeal and was not passed on by this Court in *Natural Gas Pipeline Co. of America* v. *Corporation Commission*, 349 U.S. 44. While it is true that the factual situation presented in the *Natural Gas Pipeline* case and by Michigan Wisconsin on its appeal involved sales of residue gas after gathering and processing had been completed, the principal question presented and the only question decided by this Court—was whether sales of natural gas in interstate commerce for resale are

proper subjects of state regulation. This Court held that, because such sales are subject to Federal Power Commission jurisdiction under the Natural Gas Act, State minimum price regulations affecting those sales are invalid.

This Court made absolutely no differentiation between sales at the wellhead and sales after gathering and processing. On the contrary, the opinion in the *Natural Gas Pipeline* case refers to this Court's decision in the *Phillips* case, which stated with reference to the effect of the Natural Gas Act:

> "* * * The legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of *all wholesales* of natural gas in interstate commerce and whether occurring before, during or after transmission by an interstate pipe line company" (Emphasis supplied).

The fact that this Court saw no distinction between wellhead sales and sales at the conclusion of gathering and processing, as long as such sales were sales in interstate commerce for resale, was made clear in a manner of unique significance here. For the Court distinguished *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, which had originally upheld State minimum price regulation of wellhead sales, *solely* on the ground that in that case the Court was "dealing with constitutional questions and not the construction of the Natural Gas Act, 15 U.S.C., Sec. 717 *et seq.*" 349 U.S. at 45.

This again illustrates the fact that this Court was not concerned with where, as a physical proposition, the sale

of gas took place. If the sale is (1) in interstate commerce (2) for resale, the Natural Gas Act applies according to its specific terms. This Court had held in the *Phillips* case that the Act means exactly what it says. Thus, the circumstance that the sales involved in the *Natural Gas Pipeline* and *Michigan Wisconsin* cases were made after gathering and processing was of no consequence. The principle applied by this Court extends equally to wellhead sales.

The fact that this Court will act to implement its mandate in cases of this kind is well illustrated by *Chas. Wolff Packing Co.* v. *Court of Industrial Relations of Kansas*, 267 U.S. 552. There, an appeal was taken to this Court from the Supreme Court of Kansas in a case involving the validity of an order entered by the Court of Industrial Relations of the State of Kansas. This Court's opinion was confined to one feature of the Act, and the judgment of the Kansas court was reversed with directions for further proceedings not inconsistent with the opinion. On rehearing the Kansas court rendered a judgment holding the provisions of the Act specifically considered by the Court invalid, but ordering enforcement of others. On a second appeal to this Court, both parties relied upon the former decision of this Court. The contentions were summarized as follows:

> "One insists that by reversing the original judgment of the state court and not merely a part of it, we adjudged the invalidity of the entire Act, and the other that by particularly declaring the provisions permitting the fixing of wages invalid and saying nothing about the provisions permitting the fixing of hours of labor, we impliedly held the latter valid."

Concerning them, the Court said, "Both contentions are wrong." In upholding another contention by the company, the nature of which is reflected by the opinion, the Court said:

> "The company next contends that the decision, even though not in terms determining the question of the validity of the provisions permitting the fixing of hours of labor, recognized and gave effect to principles which are applicable to that question, and if applied, will solve it. A survey of the Act and of the decision will show that this contention is well taken."

With respect to the Act itself and the effect of the former decision, this Court said:

> "When the case was first here, the question chiefly agitated and therefore discussed and decided was whether the authority to fix wages as an incident of the compulsory arbitration could be applied to a business like that of the Wolff Company consistently with the protection which the due process clause of the 14th Amendment affords to the liberty of contract and rights of property. The question was answered in the negative, and the Act was held invalid in so far as it gives that authority. The subject was much considered and the principles which were recognized and applied were distinctly stated.
>
> * * * * * * * * *
>
> "The authority which the Act gives respecting the fixing of hours of labor is merely a feature of the system of compulsory arbitration and has no separate purpose. It was exerted by the state agency as a part of that system and the state court sustained its exertion as such. As a part of the system, it shares the invalidity of the whole.

* * * * * * * * *

"It follows that the state court should have declined to give effect to any part of the order of the state agency."

There principles, we submit, find exact analogy in the present case.

Appellee's claim that other cases more properly present the question of the validity of State regulation of wellhead sales is subject to several difficulties. In the first place, this is an appeal, not certiorari, and a substantial federal question is presented. Second, the alleged distinction between wellhead sales and sales after gathering and processing has already been held by this Court to be unimportant. Third, and most important, appellee neglects to state that another case involving the precise question is now before this Court. *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, No. 797, October Term, 1956. There is no reason whatever why these cases should not be considered and decided together. Proper judicial administration would permit no other practice.*

III.

There is no adequate non-federal basis on which the order of the Oklahoma Court can rest.

Whether the wellhead portion of the order of the Corporation Commission be separable from the remainder of the order or not, it is clearly in conflict with the provi-

* The cases cited by appellee at page 11 of its motion do not even involve state regulation of wellhead sales but concern details of Federal Power Commission regulation of such sales.

sions of the Natural Gas Act, as interpreted and construed by this Court in the *Phillips* case, in which this Court, as it had done in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682:

> "* * * refused to rely on such refinements and instead based its decision in Interstate on the broader ground that sales in interstate commerce for resale by producers to interstate pipe line companies do not come within the 'production or gathering' exemption. 347 U.S. at 680-681."

The conflict between the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act and the asserted right of states to regulate sales of natural gas in interstate commerce and the necessity of resolving it has been recognized by this Court in every case in which it has been called to its attention. The only real question is therefore whether, if it has not already done so, the Court will resolve it in this case. It is respectfully suggested that there will be no better time than now and no better case in which to do it than in this.

CONCLUSION

Appellant submits that this case should be disposed of upon its merits, along with others in which the same question is or will be presented, and that only by so doing can

appellant be protected from serious injury which would otherwise result.

Respectfully submitted,

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*Attorney upon whom service should be made.

May, 1957.

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 86

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

MOTION OF APPELLEE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA FOR LEAVE TO FILE MOTION TO DISMISS OUT OF TIME AND MOTION TO DISMISS

FERRILL H. ROGERS,
Oklahoma Corporation Commission,
State Capitol Office Building,
Oklahoma City, Oklahoma,
Attorney for Appellee, the Corporation Commission of the State of Oklahoma.

April, 1957.

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In the
Supreme Court of the United States
OCTOBER TERM, 1956

No. 809

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

VERSUS

THE CORPORATION COMMISSION OF THE
STATE OF OKLAHOMA, ET AL.,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE
STATE OF OKLAHOMA.

MOTION OF APPELLEE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA FOR LEAVE TO FILE MOTION TO DISMISS OUT OF TIME

Appeliee the Corporation Commission of the State of Oklahoma respectfully moves the Court for leave to file simultaneously herewith its Motion to Dismiss in the above-entitled cause.

In support of this motion, appellee respectfully shows that Phillips Petroleum Company has filed its Notices of Appeal in this case and in its companion cases entitled Panhandle Eastern Pipe Line Company v. The Corporation

Commission of Oklahoma, *et al.*, and Natural Gas Pipeline Company of America v. The Corporation Commission of Oklahoma, *et al.*; however, appellee has not yet been served with Phillips' Jurisdictional Statements. These cases all involve one administrative order issued by the Corporation Commission of Oklahoma. This appellee received the Jurisdictional Statement of appellant Michigan-Wisconsin Pipe Line Company in the above-entitled cause on March 1, 1957, and received the Notices of Appeal of appellant Phillips Petroleum Company in all three of the above cases on March 3, 1957. Due to press of work, consultation with many attorneys and illness of the Conservation Attorney, appellee has been unable to prepare and file this statement within 30 days after receipt of the Jurisdictional Statement in Case No. 809.

Appellee, The Corporation Commission of Oklahoma believes that its Motion to Dismiss is meritorious for the reasons fully set forth in said motion and therefore it is believed desirable for the Court to have this appellee's Motion to Dismiss before it in Case No. 809.

FERRILL H. ROGERS,

Attorney for Appellee, the Corporation Commission of the State of Oklahoma.

MOTION OF APPELLEE, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA TO DISMISS

Appellee, the Corporation Commission of the State of Oklahoma, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss the appeal in the above-entitled case on the grounds (a) that appellant, Michigan-Wisconsin Pipe Line Company, is not aggrieved by the order of the Oklahoma Supreme Court from which it here seeks to appeal and that accordingly there is no case or controversy in which appellant has a justiciable interest and no substantial federal question; (b) that the federal question sought to be reviewed was not timely or properly raised, or expressly passed on; and (c) that the order of the Oklahoma Supreme Court from which appellant here seeks to appeal rests on an adequate non-federal basis.

STATEMENT OF CASE

The appellant is a natural gas pipeline company. It does not purchase natural gas at the wellhead but confines its purchases to residue gas at the outlets of gasoline plants.

Order No. 26096 of the Corporation Commission of the State of Oklahoma entered on July 29, 1952, and fixing a minimum price for sale of natural gas produced from the Guymon-Hugoton Field in Oklahoma (this order is set out in full as Appendix "B" to appellant's Jurisdictional Statement filed on this appeal) was divided into several parts. One portion of the order prohibited the sale of gas at the wellhead at less than 9.8262 cents per m.c.f. Another portion of the order prohibited the sale of residue gas at less than

9.8262 cents per m.c.f. This provision fixing a minimum price for the sale of residue gas was the only portion of the order which affected the appellant.

In its appeal to the Supreme Court of Oklahoma (Cause No. 35732, opinion reported in 272 P.2d 425), and then to this Court (Cause No. 320, October Term 1954, opinion reported 349 U.S. 908, 75 Sup. Ct. 598), appellant raised only the question of the validity of the Corporation Commission's order insofar as it applied to appellant's purchases of residue gas, which purchases are made after the completion of production, gathering and processing of the natural gas (Page 4 of appellant's Statement as to Jurisdiction in Cause No. 320, October Term 1954).

This Court ruled (349 U.S. 908) that the attempt by the Oklahoma Corporation Commission to fix a minimum price for appellant's purchases of residue gas was invalid. It based its decision upon the authority of the case of *Natural Gas Pipeline Company* v. *Panoma Corporation*, 75 Sup. Ct. 576, 349 U.S. 44 (1955), a case which also dealt with the sale of residue gas to an interstate pipeline company at the outlet of a gasoline plant after the completion of production, gathering and processing. In the *Panoma* case this Court stated (349 U.S. 44) that it was dealing with a situation where Oklahoma had attempted "to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce." This Court then stated that "such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission" (349 U.S. 44, 45); citing

Phillips Petroleum Co. v. *Wisconsin*, 347 U.S 672, 74 Sup. Ct. 794, a case which also involved sales of residue gas to an interstate pipeline company which sales occurred at the outlet side of a gasoline plant after processing had been completed.

By its Order on Mandate on October 8, 1956 (this order is set out in full as Appendix "A" of appellant's Jurisdictional Statement filed on this appeal), the Oklahoma Supreme Court complied fully with this Court's order of reversal and set aside Order No. 26096 insofar as it pertained to appellant's purchases of residue gas. The Oklahoma Supreme Court refused, however, to go beyond this Court's order by invalidating that portion of Order No. 26096 fixing a minimum price for natural gas sold at the wellhead in the Guymon-Hugoton Field of Oklahoma. Appellant now urges that this Court's order requires that the wellhead portion of Order No. 26096 be invalidated despite the fact that the validity of the wellhead portion of the order was never placed in issue before this Court or before the Oklahoma Supreme Court in appellant's initial appeal to that court and despite the fact that appellant has no interest in the wellhead portion of Order No. 26096 since it makes no purchases of natural gas at the wellhead.

Proposition I.

Appellant is not aggrieved by the Order of the Oklahoma Supreme Court and accordingly there is no case or controversy in which appellant has a justiciable interest and no substantial Federal question.

Throughout the course of this litigation appellant has repeatedly stated that it is a purchaser of residue gas at the outlets of gasoline plants rather than at the wellhead. Its most recent statement to that effect appears on pages 4 and 5 of its Jurisdictional Statement filed on this appeal. That portion of Order No. 26096 fixing a minimum price for gas sold at the wellhead does not affect appellant. The Oklahoma Supreme Court's Order on Mandate of October 8, 1956, invalidated Order No. 26096 insofar as it applied to appellant's purchases of residue gas. Appellant had no further interest in Order No. 26096. It is therefore not for appellant to raise the question of the validity of the wellhead portion of Order No. 26096 for it is not aggrieved thereby. In the case of *Louisville R. Co. v. Finn*, 235 U.S. 601, 35 Sup. Ct. 146 (1915), this Court stated:

> "This Court does not sit to pass upon moot questions; and, as has been often pointed out, it is incumbent upon one who seeks an adjudication that a state statute is repugnant to the Federal Constitution to show that he is within the class with respect to whom it is unconstitutional, and that the alleged unconstitutional feature injures him, and so operates as to deprive him of rights protected by the Constitution."

Appellant would attempt to establish that it has an interest in the wellhead portion of Order No. 26096 by asserting that if the wellhead price is sustained Phillips

Petroleum Company, which sells residue gas to appellant, might discontinue some of its wellhead purchases and thereby reduce appellant's supply of gas or that if the wellhead price is sustained, it may result in increased rates for gas purchased by appellant. This asserted interest of appellant is at most indirect and speculative and we submit that it is not sufficient to give appellant a direct interest in the wellhead portion of the order on which to base this appeal. Section 7(b) of the Natural Gas Act, 15 U.S.C.A. 717f(b), prevents Phillips from abandoning all or any portion of the gas service rendered by it to appellant from the gasoline plant to which appellant's transmission line is connected without first obtaining permission or approval from the Federal Power Commission. Such permission can be given only if, after a hearing, the Commission finds that the available supply of natural gas is depleted or that present or future convenience or necessity permits such abandonment. Obviously the gas reserves involved are not depleted and it is equally obvious that public convenience or necessity would not permit Phillips to deprive appellant of all or a substantial portion of its gas supply. Also the case of *United Gas Pipeline Company* v. *Mobile Gas Service Corp.*, 76 Sup. Ct. 373, 350 U.S. 332 (1956), demonstrates that regardless of what Phillips may pay independent producers for gas it purchases at the wellhead, Phillips cannot unilaterally change its contract price to appellant nor will a change in price of the gas Phillips purchases at the wellhead authorize Phillips to file for a higher rate with the Federal Power Commission.

Proposition II.

The Federal question sought to be reviewed was not timely or properly raised, or expressly passed on.

In its original appeal to the Oklahoma Supreme Court and in its original appeal to this Court, appellant raised only the issue of the validity of that portion of Order No. 26096 which fixed a minimum price for appellant's purchases of residue gas. That the wellhead portion of the Order was not in issue before the Oklahoma Supreme Court is clearly shown by the statement made in that Court's Opinion, *Natural Gas Pipeline Co. v. Corporation Commission*, 272 P.2d 425 (1954), at page 432, where it states:

> "All parties concede that under the cases cited above the Commission can fix the price of gas as taken from the structure."

That appellant did not raise the issue of the wellhead portion of the Order in its initial appeal to this Court (No. 320, October Term, 1954) is shown by its Statement of the Questions Presented made in its Statement as to Jurisdiction filed therein, which Statement was as follows:

> "1. Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Constitution of the United States (Art. I, Sec. 8, Cl. 3) and the Natural Gas Act (15 U.S.C. 717, *et seq.)*, to fix the price of residue gas sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for residue gas obtained therefrom is not obtained

"2. Whether, as applied to Michigan-Wisconsin, the Commission's order fixing the price of residue gas sold in Texas is an attempt to exercise extraterritorial jurisdiction and violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

"3. Whether, as applied to appellants, the Commission's order is arbitrary and unreasonable and abrogates private contracts for no public purpose, contrary to the Due Process Clause of the Fourteenth Amendment and the Contract Clause (Art. I, Sec. 10) of the Constitution of the United States."

Only at this late date has appellant sought to raise the validity of the wellhead portion of Order No. 26096. Natural Gas Pipeline Company of America and Panhandle Eastern Pipe Line Company, purchasers of residue gas situated similarly to appellant, took appeals to the Oklahoma Supreme Court (No. 35731 and No. 35734) and to this Court (No. 321 and No. 322) from that portion of Order No. 26096 fixing a minimum price for residue gas in companion cases to this case, but neither ever raised the question of the validity of the wellhead portion of the Order, nor have either of them attempted to perfect appeals to this Court from the October 8, 1956 Order on Mandate of the Oklahoma Supreme Court.

We respectfully submit therefore that the question which appellant now seeks to have reviewed was not timely or properly raised or expressly passed on and that this appeal should be dismissed. *McCullough* v. *Kammerer*, 323 U.S. 327, 65 Sup. Ct. 297 (1945); *Duignan* v. *United States*, 274 U.S. 195, 47 Sup. Ct. 566 (1927).

Appellant seeks to have this Court now decide, as a by-product of this case and after this case has been litigated through both the Supreme Court of the State of Oklahoma and this Court, a question which it did not raise in its original appeals and yet a question which involves matters of tremendously vital consequence to the entire natural gas industry. Appellant asks this Court to decide at this time, in this casual manner and in a case where the question has not been properly raised nor the necessary facts for a decision included in the record, the questions (1) of whether sales of natural gas by independent producers at the wellhead are sales in interstate commerce for resale for ultimate public consumption, if the gas ultimately crosses a state line, and (2) of whether, if such sales are in interstate commerce for resale for ultimate public consumption they are within the production and gathering exemption of Section 1(b) of the Natural Gas Act, 15 U.S.C.A. 717(b). Indeed appellant in its Jurisdictional Statement filed on this appeal appears to assume that it is settled that such sales are sales in interstate commerce and are not within the production and gathering exemption; yet we have been unable to find any case, and we submit that there is none, so holding with respect to such sales. Appellee does not admit that sales of gas at or near the wellhead are sales in interstate commerce. If such sales are sales in interstate commerce, then appellee does not admit that they are not covered by the production and gathering exemption contained in Section 1(b) of the Natural Gas Act. Being confined [illegible] to factual situations involving exclusively sales of residue gas from gasoline plants, that is, sales made after production, gathering and processing have been completed, the record presented to this Court

in the prior appeal (No. 320, October Term, 1954) can hardly be said to afford an adequate basis for passing on whether wellhead sales are interstate sales or whether sales are covered by the production and gathering exemption.

Cases presenting these points on adequate factual records are pending in the United States Court of Appeals for the Fifth Circuit on appeal from the Federal Power Commission. For example, *Deep South Oil Co.* v. *F. P. C.*, Case No. 15849; *Shell Oil Company* v. *F. P. C.*, Case No. 15900; and *Humble Oil and Refining Company* v. *F. P. C.*, Case No. 15884, all involve the question of whether wellhead sales constitute interstate commerce and, if so, whether such sales are exempt under the production and gathering exemption. These cases are awaiting disposition, having been argued on April 8, 1957. The Federal Power Commission is a party to those cases. So are independent producers whose rights would be radically affected if appellant's unwarranted assumptions were to be indulged in here. A pipeline company and a state agency are not, under the circumstances, appropriate parties to litigate those issues. Whatever law may be applicable to those issues, it ought to be established in cases dealing directly with those issues rather than with them incidentally. The record in this case deals only with residue sales made after production, gathering and processing have ceased. How can it be argued that this record provides an adequate basis for a decision on issues relating to wellhead sales?

The wellhead portion of Order No. 26096 is, except for the amount of the minimum price, identical to that order fixing a minimum price for sales of gas at the wellhead in

the Guymon-Hugoton Field of Oklahoma which was upheld by this Court in the case of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 71 Sup. Ct. 215, 340 U.S. 179 (1950). This Court held in that case that it is undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas and that the minimum wellhead price order of the Oklahoma Corporation Commission there under consideration was lawful since it was substantially related to a legitimate end sought to be attained. This Court then held the minimum wellhead price valid stating:

> "Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause."

The action which appellant now asks this Court to take would require that the *Cities Service* case be overruled, a step which this Court did not take in its original decisions in this case and its companion cases. This Court found merely that the *Cities Service* case was not applicable to this case. The *Cities Service* case did not apply here because sales of residue gas at the outlets of gasoline plants after production, gathering and processing had ceased were all that were here involved. Now when appellant is attempting to enlarge the issues and to strike down that portion of Order No. 26096 dealing with a minimum price for natural gas sold at the wellhead, the *Cities Service* case stands squarely in appellant's path proclaiming that the wellhead portion of Order No. 26096 is a proper exercise

of the State of Oklahoma's police power legitimately directed toward the conservation of one of its precious natural resources. If this Court should overrule the *Cities Service* case such action would seriously jeopardize the power of the State of Oklahoma to take reasonable measures for the conservation of its valuable resource, natural gas. The position which appellant now takes, if upheld by this Court, might also, through an extension of the rule stated in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157 (1954), place in jeopardy the gross production tax which the State of Oklahoma levies upon the production of natural gas within the State of Oklahoma.

Proposition III.

The Order of the Oklahoma Supreme Court from which appellant here seeks to appeal rests on an adequate non-Federal basis.

This Court by its Order of April 18, 1955, invalidated that portion of Order No. 26096 which fixed a minimum price for appellant's purchases of residue gas. It is submitted that this must necessarily be the effect of the Order of April 18, since this Court had no other issues before it. After this Court's order, it remained for the Supreme Court of the State of Oklahoma to determine the purely state question of whether the invalidation of Order No. 26096 as to sales of residue gas required that the wellhead portion of Order No. 26096 also be declared to be invalid. The Oklahoma Supreme Court by its order in effect determined that the various portions of Order No. 26096 were separable and that the decision invalidating the residue portion of Order No. 26096 did not invalidate the wellhead portion of the order. Such order gave full effect to the de-

cision of this Court while at the same time effectuating the determination of the Oklahoma Supreme Court with respect to the purely state question of the separability of Order No. 26096. This Court held that the question of the separability of a state statute is one for the state court in the case of *Dorchy* v. *State of Kansas*, 264 U.S. 286, 44 Sup. Ct. 323 (1924), where it stated:

> "The task of determining the intention of the state legislature in this respect, like the usual function of interpreting a state statute, rests primarily upon the state court. Its decision as to the severability of a provision is conclusive upon this Court."

Thus we submit that the determination of the Oklahoma Supreme Court that this Court's order invalidating the residue portion of Order No. 26096 did not require the invalidation of the entire order is not subject to review by this Court, since such determination rests on an adequate non-federal basis.

CONCLUSION

We respectfully submit, therefore, that for the reasons above set forth, this appeal of Michigan-Wisconsin Pipe Line Company should be dismissed.

FERRILL H. ROGERS,

Oklahoma Corporation Commission,
State Capitol Office Building,
Oklahoma City, Oklahoma,

Attorney for Appellee, the Corporation Commission of the State of Oklahoma.

April, 1957.

Office - Supreme Court, U.S.
FILED
APR 30 1957
JOHN T. FEY, Clerk

Nos. 111-113

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellees*.

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Appellees*.

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPENDIX

Appendix "A":

Order of Oklahoma Supreme Court dated October 8, 1956, in Natural Gas Pipeline Co. of America v. Corporation Commission of Oklahoma, et al. .. 1a

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Order of Oklahoma Supreme Court dated December 4, 1956, in Panhandle Eastern Pipe Line Co. v. Corporation Commission of Oklahoma, et al. 4a

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ——

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellees*.

No. ——

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Appellees*.

No. ——

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT

Appellant appeals from the final orders and judgments of the Supreme Court of the State of Oklahoma entered on October 8 and December 4, 1956, purporting to comply with the opinions and mandates of this Court issued in cases Nos. 320, 321 and 322, October Term, 1954. Although docketed as separate appeals,

the three cases are companion cases involving the same issues, which from the beginning have been briefed, argued and considered on a single record. The orders in all three cases are substantially the same.

An appeal from the same order in the *Michigan-Wisconsin Pipe Line Company* case has been taken by appellee Michigan-Wisconsin Pipe Line Company in case No. 809, October Term, 1956.

An appeal presenting in part some of the same issues with respect to an order of the Kansas Corporation Commission is pending in case No. 797, October Term, 1956.

This statement is submitted to show that the Supreme Court of the United States has jurisdiction and that substantial federal questions are presented.

THE ORDERS BELOW

The orders appealed from are not officially reported and no opinions were written. Copies of the three orders are attached as Appendix "A". The order of the Supreme Court of Oklahoma entered on December 4, 1956, denying appellant's petition for rehearing is attached as Appendix "B".

JURISDICTION

This Court by per curiam opinion entered April 11, 1955, in *Natural Gas Pipeline Co. of America* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 44, and per curiam opinion entered April 18, 1955, in *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma* and *Panhandle Eastern Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 908, reversed the decision of the Supreme Court of

Oklahoma affirming an order of the appellee Corporation Commission of Oklahoma fixing a minimum price for the sale of natural gas produced from the Guymon-Hugoton Field in Oklahoma.[1]

On October 8, 1956, the Supreme Court of Oklahoma, purporting to comply with this Court's mandates, entered its orders in the *Natural Gas Pipeline Company* and *Michigan-Wisconsin Pipe Line Company* cases modifying and only partially reversing the minimum price order of the appellee Corporation Commission of Oklahoma and entered an order (Tr. 81-82) in the *Panhandle Eastern Pipe Line Company* case completely reversing such price order. These are the orders appealed from herein except with respect to the *Panhandle Eastern Pipe Line Company* case in which the order of October 8, 1956, was superseded by an order entered on December 4, 1956, like the orders in the other two cases (see Appendix "A"). On October 16, 1956, appellant Phillips Petroleum Company filed its petition for rehearing in the three cases (Tr. 17-35) and on December 4, 1956, with one judge dissenting, the Supreme Court of Oklahoma entered its order denying appellant's petition for rehearing. Notice of appeal (Tr. 63-72, 89-97) to this Court was filed with the Clerk of the Supreme Court of Oklahoma on March 1, 1957, in each case except the *Natural Gas Pipeline Company* case in which the notice of appeal (Tr. 40-48) was filed on March 2, 1957.

The jurisdiction of this Court is twofold.

First, these appeals involve the construction and effect to be given the mandates of this Court in the

[1] Order No. 26096 entered July 29, 1952 (see Appendix "C").

prior appeals, 349 U.S. 44 and 908. In the prior appeals the jurisdiction was founded on 28 U.S.C. § 1257(2) and the fact that the Supreme Court of Oklahoma had upheld the validity of the minimum price order promulgated by appellee Corporation Commission of Oklahoma, a "statute of a state", against the claim that the order was repugnant to a statute of the United States, specifically the Natural Gas Act, 15 U.S.C. § 717 et seq., 52 Stat. 821.

The Supreme Court of Oklahoma has misconstrued and by its actions herein complained of refused to obey and give effect to the decisions and mandates of this Court. Inasmuch as "this court has power to do all that is necessary to give effect to its judgments." and "This appeal rests on the same foundation as did the first.", *Baltimore & O. R. Co.* v. *United States*, 279 U.S. 781, 785, it is clear that this Court has jurisdiction to review such action of the Supreme Court of Oklahoma.

Second, the jurisdiction of this Court to review the final orders and judgments of the Supreme Court of Oklahoma by appeal is conferred by 28 U.S.C. § 1257(2). By the orders and judgments herein appealed from the Supreme Court of Oklahoma has upheld the validity of the minimum gas price order of the Corporation Commission of Oklahoma as it applies to all gas except only "sales of residue gas under existing gas purchase contracts" against the claim that the order was repugnant to the Natural Gas Act, 15 U.S.C. § 717 et seq., 52 Stat. 821. This Court's jurisdiction to review such orders and judgments is sustained by the following decisions: *Natural Gas Pipeline Co. of America* v. *Corporation Commission of the State of Oklahoma* and *Natural*

Gas Pipeline Co. of America v. *Panoma Corp.*, 349 U.S. 44; *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma* and *Panhandle Eastern Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 908; *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179.

QUESTIONS PRESENTED

Appellant presents the following questions by these appeals:

1. Whether the Supreme Court of the State of Oklahoma by its orders vacating the minimum price order of the Corporation Commission of Oklahoma in part only rather than in its entirety, that is, only insofar as residue gas sales under existing gas purchase contracts are concerned, properly construed, followed and complied with the opinions and mandates of this Court on the prior appeals.

2. Whether by reason of the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and the jurisdiction and authority of the Federal Power Commission thereunder the minimum gas price order of the Corporation Commission of Oklahoma, as modified by the orders of the Supreme Court of Oklahoma, is valid insofar as it attempts to fix the minimum price at the wellhead of natural gas which is not sold at the wellhead but is gathered and processed for its liquid content and the residue sold by the producer, the appellant, in interstate commerce for resale for ultimate public consumption.

3. Whether by reason of the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and the jurisdiction and authority of the Federal Power Commis-

sion thereunder the minimum gas price order of the Corporation Commission of Oklahoma, as modified by the orders of the Supreme Court of Oklahoma, is valid insofar as it attempts to fix the minimum price at the wellhead of natural gas purchased by the appellant at the wellhead for sale in interstate commerce for resale for ultimate public consumption.

4. Whether the minimum gas price order of the Corporation Commission of Oklahoma, as reversed and modified in part only by the orders of the Supreme Court of Oklahoma and as it relates to gas sold in interstate commerce, violates the commerce clause (Section 8, Article I) of the United States Constitution.

STATUTE INVOLVED

The statute here involved is a legislative order of the appellee Corporation Commission of the State of Oklahoma as modified by the orders and judgments of the Supreme Court of Oklahoma herein appealed from.

The order as made by the Corporation Commission provides in part;

> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is

processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

A complete copy of the order is attached as Appendix "C".

By the orders and judgments of the Supreme Court of Oklahoma herein appealed from, such order was reversed only insofar as it applies to certain designated sales of residue gas under existing contracts and as thus modified was continued in effect as to all other sales of gas.

STATEMENT

Appellant, Phillips Petroleum Company, is a natural gas company as defined in the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and is engaged generally throughout the United States in the business of exploring for, developing, producing, buying and selling natural gas. Appellant is a substantial producer of natural gas in the Guymon-Hugoton Field involved herein. Appellant does not sell its gas at the wellhead but first gathers and processes the same for the removal of liquid hydrocarbons and then sells the residue for delivery at the exhaust of its processing plants. In addition, appellant has contracts with other producers in the field for the purchase of their gas at the wellhead which it gathers, processes, handles and resells in the same manner as it does its own produced gas.

All of the gas from certain of its leases is dedicated and, after gathering and processing, is sold to appellee Panhandle Eastern Pipe Line Company under a long-term contract for resale in interstate commerce. All

of the gas from its other leases and the gas purchased by it from other producers is dedicated and, after gathering and processing, is sold to appellee Michigan-Wisconsin Pipe Line Company under a long-term contract for resale in interstate commerce. The gas so sold to Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company is the same gas involved in the former appeals to this Court in these cases and in respect to which this Court held the minimum gas price order to be invalid. It is in part the same gas involved in the case of *Phillips Petroleum Company* v. *Wisconsin,* 347 U.S. 672, in respect to which this Court held appellant, Phillips Petroleum Company, to be a natural gas company under the Natural Gas Act.

By the order here involved the appellee Corporation Commission of Oklahoma fixed a minimum price of 9.8262¢ per Mcf for gas produced from the Guymon-Hugoton Field and sold at the wellhead, or if sold off the lease or otherwise utilized, the equivalent of such price at the wellhead. In the case of gas sold after gathering, the Commission determined that the equivalent of said wellhead price for the gathered gas was the wellhead price of 9.8262¢ plus the reasonable cost of gathering. In the case of gas sold after processing, the Commission found that the value of the liquids extracted from the gas compensated for the cost of gathering and processing the gas and determined that the equivalent of said wellhead price for the residue gas was the same as the wellhead price of 9.8262¢. As to all gas the price was related to the wellhead.

On appeal the Supreme Court of Oklahoma originally affirmed the minimum gas price order in its entirety.

In the ensuing appeals to this Court from such decision of the Supreme Court of Oklahoma this Court held that the regulation by the state of the price of natural gas sold for resale in interstate commerce was invalid as being in conflict with the jurisdiction over such sales vested in the Federal Power Commission by the Natural Gas Act. *Natural Gas Pipe Line Co. of America* v. *Corporation Commission of the State of Oklahoma,* 349 U.S. 44; *Michigan-Wisconsin Pipe Line Company* v. *Corporation Commission of the State of Oklahoma* and *Panhandle Eastern Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma,* 349 U.S. 908.

Although this Court in its opinion mentioned as a fact that the purchase of gas by the appellants in the former appeals was of residue gas, the opinion of this Court was not based upon or limited to such fact but in principle extended to all sales of gas for resale in interstate commerce over which the Federal Power Commission was given jurisdiction under the Natural Gas Act.

Upon remand of the cases by this Court the Supreme Court of Oklahoma by the orders and judgments here appealed from in effect distinguished between sales of residue gas under existing gas purchase contracts and all other sales, holding that the gas price order of the Corporation Commission was "reversed, set aside and held for naught insofar as sales of residue gas" by Phillips Petroleum Company and other producers to the appellants in the prior appeals "under existing gas purchase contracts are concerned" (see Appendix "A").[2]

---

[2] The initial order of the Supreme Court of Oklahoma entered October 8, 1956, in the Panhandle Eastern case was a complete reversal rather than a partial reversal (Tr. 81-82).

The effect of the Oklahoma Supreme Court's partial reversal of the gas price order is to retroactively make a new order applicable to all sales of natural gas for resale in interstate commerce, including wellhead sales, sales after gathering and residue sales under new contracts, except only sales of residue gas at the exhaust of processing plants under existing contracts.

Under the gas price order as originally made by the Corporation Commission, appellant Phillips Petroleum Company was not adversely affected because the order as written afforded to appellant the opportunity to obtain for its residue gas a price equivalent to the prescribed wellhead price and the price it was required to pay for its purchased gas. Not being adversely affected appellant had no cause to appeal.

The action of the Supreme Court of Oklahoma only partially reversing the Commission order subjects appellant to all of the wellhead provisions of the order as it applies both to appellant's produced and purchased gas without affording to appellant any means of getting the equivalent for the residue. Thus for the first time appellant is faced with an order which adversely affects its rights and interests.

The order as thus modified by the Supreme Court of Oklahoma so as to eliminate only residue sales under existing contracts is nonetheless made applicable to the same identical gas, except for processing and the point of incidence in interstate commerce, that this Court in the prior appeals held was not subject to price regulation by the state.

Within the time prescribed by the rules of the Supreme Court of Oklahoma, appellant on October 16, 1956, filed with the Clerk of said court its petition

for rehearing of such court's orders of October 8, 1956. In such petition for rehearing appellant asserted that the partial reversal of the Oklahoma Corporation Commission's order was not in compliance with this Court's opinion and mandate and that because of the jurisdiction of the Federal Power Commission under the Natural Gas Act the Oklahoma Corporation Commission had no jurisdiction or authority to prescribe the prices at which natural gas is sold for resale in interstate commerce whether the sale occurs at the wellhead or at some subsequent point (Tr. 26-29). Appellant's petition for rehearing was set for oral argument (Tr. 36), the questions thus presented fully briefed and argued both by appellant, the appellees and a number of parties amici curiae, and on December 4, 1956, the Supreme Court of Oklahoma entered its order denying the petition for rehearing (Tr. 37-39).

FEDERAL QUESTIONS ARE SUBSTANTIAL

The Supreme Court of Oklahoma in its orders modifying the minimum price order of the Corporation Commission of Oklahoma by setting it aside only "insofar as sales of residue gas * * * under existing gas purchase contracts are concerned" has completely ignored the reasoning and effect of the decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and the decisions and mandates of this Court in the former appeals herein.

This Court in the former appeal in the *Natural Gas Pipeline Company* case held that the State of Oklahoma was without power to regulate the price of natural gas over which the Federal Power Commission has jurisdiction under the Natural Gas Act (349 U.S. at 44-45). Such holding was adopted in the former

appeals in the *Michigan-Wisconsin Pipe Line Company* and *Panhandle Eastern Pipe Line Company* cases (349 U.S. at 908). In so holding, this Court said that the decision in the case of *Phillips Petroleum Co. v. Wisconsin* was controlling.

In the case of *Phillips Petroleum Co. v. Wisconsin* this Court held that all sales of gas for resale in interstate commerce are subject to the jurisdiction of the Federal Power Commission granted by the Natural Gas Act. The Court in that case said:

> "* * * we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipe line company." (347 U.S. at 682)

This Court then concluded:

> "Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems." (Id. at 684)

This Court will take judicial notice of the fact that pursuant to its mandate in the *Phillips* case the Federal Power Commission in 1954 issued its series of No. 174 orders promulgating rules applicable to all sales of natural gas for resale in interstate commerce by independent producers[3] and since that time has

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[3] Federal Register, Vol. 19, No. 1, p. 4534, published July 22, 1954;

Federal Register, Vol. 19, No. 156, p. 5081, published August 12, 1954;

Federal Register, Vol. 19, No. 243, p. 8807, published December 23, 1954.

been exercising jurisdiction over all such sales whether made at the wellhead or at a subsequent point.

If the action of the Supreme Court of Oklahoma herein complies with this Court's mandate, then the Federal Power Commission has been flagrantly violating this Court's mandate in the *Phillips* case for almost three years.

Moreover, in *J. M. Huber Corp.* v. *Federal Power Commission,* 236 F. 2d 550, cert. den. 352 U.S. 971, the United States Court of Appeals for the Third Circuit sustained the Federal Power Commission's interpretation of this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin,* supra, as giving the Federal Power Commission jurisdiction over all sales of natural gas for resale in interstate commerce whether made at the wellhead or in the field after gathering or after processing.

If the action of the Supreme Court of Oklahoma herein is allowed to stand and the Federal Power Commission continues to regulate all sales, including wellhead sales, of natural gas for resale in interstate commerce there is a direct conflict between the federal and state agencies involved.

It was to avoid such conflict that this Court in the *Phillips* case and on former appeal herein held that the state was without jurisdiction. In the *Phillips* case this Court in discussing the legal and practical impossibility of any such dual authority said:

> "* * * the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control." (347 U.S. at 681)

This same issue as to the authority of a state to regulate the price of natural gas sold for resale in interstate commerce is before this Court in the case of *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.,* No. 797, October Term, 1956. It is also presented by the appellee Michigan-Wisconsin Pipe Line Company in the case of *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission of Oklahoma, et al.*, No. 809, October Term, 1956, in another appeal from one of the same orders here involved.

CONCLUSION

Appellant respectfully submits that the orders herein appealed from do not comply with or give full effect to the decisions and mandates of this Court in the former appeals and that these appeals present substantial federal questions which should be considered and disposed of on the merits.

Respectfully submitted,

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April, 1957

APPENDIX "A"

FILED
IN SUPREME COURT
OF OKLAHOMA
OCT 8, 1956.
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

Now on this 8 day of October, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this court;

Now, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals of this court and the Supreme Court of the United

States, be and the same is hereby reversed, set aside and held for naught in so far as sales of residue gas by Panoma Corporation and its successors to Natural Gas Pipeline Company of America under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the mandate of that court in the amount of $1,498.10, and its costs incurred in this court, as shown by statement filed herein, in the amount of $707.61.

N. B. JOHNSON,
Chief Justice.

FILED
IN SUPREME COURT
OF OKLAHOMA
OCT 8, 1956.
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

Now on this 8 day of October, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this court;

NOW, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals to this court and the Supreme Court of the United States, be and the same is hereby reversed, set aside and held for naught in so far as sales of residue gas by Phillips Petroleum Company and its successors to Michigan-Wisconsin Pipe Line Company under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the Mandate of that court in the amount of $100.00.

N. B. JOHNSON,
Chief Justice.

FILED
IN SUPREME COURT
OF OKLAHOMA
DEC 4 1956
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,734

PANHANDLE EASTERN PIPE LINE COMPANY,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

Now on this 3rd day of December, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this Court;

NOW, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals to this court and the Supreme Court of the United States, be and the same is hereby reversed, set aside and

held for naught in so far as sales of residue gas by producers to Panhandle Eastern Pipe Line Company under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the mandate of that court in the amount of $100.00 and its costs incurred in this court.

N. B. JOHNSON,
Chief Justice.

APPENDIX "B"

FILED
IN SUPREME COURT
OF OKLAHOMA
DEC 4 1956
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

No. 35,734

PANHANDLE EASTERN PIPE LINE COMPANY, A CORPORATION, *Plaintiff in Error,*

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

It is hereby ordered that petition of defendant in error, Phillips Petroleum Company, for rehearing of orders of October 8, 1956, be and the same is denied.

DONE BY ORDER OF COURT this 4th day of December, 1956.

N. B. JOHNSON,
Chief Justice.

BLACKBIRD, J., *Dissenting*:

I dissent to the orders this day entered in Causes Numbered 35,731, 35,732 and 35,734, for the reason that the decisions of the United States Supreme Court in Natural Gas Pipe Line Co. v. Panoma Corp., and Corp. Comm., 349 U. S. 44, 75 S. Ct. 576, Michigan-Wisconsin Pipe Line Co. v. Corp. Comm., 349 U. S. 908, 75 S. Ct. 798, and Panhandle-Eastern Pipe Line Co. v. Corp. Comm., 349 U. S. 908, 75 S. Ct. 598, reversed, generally, the previous decision of this court in the consolidated cases of Natural Gas Pipe Line Co. v. Corp. Comm., 272 P 2d 435, and did not specifically except from its operation and effect any part of the Corporation Commission's Order No. 26,096, nor any of the gas dealt with in said order.

APPENDIX "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628
Order No. 26096

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, FOR AN ORDER DETERMINING THE MINIMUM PRICE AT WHICH GAS PRODUCED FROM THE GUYMON-HUGOTON FIELD MAY BE FIRST PURCHASED OR SOLD

Report of the Commission

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, a.m., at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclusion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Rizley, Tyron and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company; C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. Murray Robinson and Dale & Dale appeared for applicants; L. T. Cramer appeared for Office of Price Stabilization; Joe Rolston and R. R. McCracken appeared for Cities Service Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29 day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

Findings

1. That this is an application of certain mineral owners in Texas County, Oklahoma for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly

set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabilization appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1054, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource; to-wit: natural gas;

b. Actual physical waste of natural gas;

c. Loss to the royalty owners in said field;

d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;

e. Inequitable taking of natural gas from the common source of supply involved;

f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is proc-

ssed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expense in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion

that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29 day of July, 1952.

CORPORATION COMMISSION OF OKLAHOMA

REFORD BOND, *Chairman*
RAY O. WEEMS, *Vice-Chairman*
RAY C. JONES, *Commissioner*

ATTEST:

TOM McMURRAY
Secretary

Office - Supreme Court, U.S.
FILED
JUN 20 1957
JOHN T. FEY, Clerk

111-113

Nos. 850-851 and 855

IN THE

Supreme Court of the United States

October Term, 1956

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellees*.

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Appellees*.

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

On Appeal from the Supreme Court of the State of Oklahoma

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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IN THE

Supreme Court of the United States

October Term, 1956

No. 953

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellees*.

No. 954

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Appellees*.

No. 955

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

On Appeal from the Supreme Court of the State of Oklahoma

BRIEF IN OPPOSITION TO MOTION TO DISMISS

STATEMENT

Since the filing of these appeals this Court has noted probable jurisdiction in the case of *Cities Service Gas*

Co. v. *State Corporation Commission of Kansas, et al.*, No. 797, October Term, 1956, wherein the same substantive issue is raised, i.e., the power of a state, in the face of the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and the jurisdiction of the Federal Power Commission thereunder, to fix the minimum price at the wellhead of gas sold by the producer in interstate commerce for resale for ultimate public consumption.

The *Cities Service* appeal and these appeals, together with the appeal of *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission*, No. 809, October Term, 1956, being an appeal from one of the same orders appealed from herein and raising the same issue, should be heard and considered together.

It would be an anomaly for this Court to herein sustain the power of the State of Oklahoma to fix the minimum wellhead price of gas sold in interstate commerce for resale for ultimate public consumption by summarily dismissing these appeals after having noted probable jurisdiction in the Kansas appeal. It would be an anomaly compounded if, after thus affirming the order of the appellee Corporation Commission and such order thereby becomes final, this Court in the Kansas appeal should hold that the state is without power to make such an order.

The various points raised by appellee will be discussed under the proposition number under which each was presented in the motion to dismiss.

I.

The Federal Questions Sought to be Reviewed Were Timely Raised and Passed Upon

Appellee's Proposition I that the federal questions herein sought to be reviewed were not timely raised and passed on, as is true with respect to the whole of its motion to dismiss, is based on the false premise that the minimum gas price order was divided into several separate parts, one dealing with wellhead sales, one with sales after gathering, and one with sales of residue gas after processing, and that the questions heretofore raised and decided were limited to only the so-called "residue" portion of the order.

In the first place, the gas price order was not so divided into separate and different parts but was an interrelated and interdependent whole. This is demonstrated by even the most casual reading of the three sentences comprising Paragraph No. 1 of the order portion of the order (see page 12a of Appendix "C" of appellant's Jurisdictional Statement). The first sentence provides for a specific minimum price or its equivalent, measured at the wellhead, for all gas produced from the Guymon-Hugoton Field, *regardless of where sold or utilized.* The other two sentences merely provide the formula or mechanics for computing the equivalent of the *wellhead* price where the gas is not sold at the wellhead. The last two sentences are not complete, independent and separate thoughts but each is dependent upon and but an incident to the first sentence, which is the substantive portion of the order and refers to *all* sales and not just sales at the wellhead.

The *entirety* of the order is further demonstrated by the Commission's Findings of Fact Nos. 11 and 14 (see pages 10a and 12a of Appendix "C" of appellant's

Jurisdictional Statement) upon which the last two sentences of Paragraph No. 1 of the order are based. Such findings are to the effect that the formula so provided is necessary as an aid to determine whether a price received elsewhere than at the wellhead is the equivalent of the minimum wellhead price fixed by the order. The findings show that the whole of the order, including the two sentences referring to sales after gathering and of residue, provides for and relates to a basic "*wellhead*" *price* for *all* gas, no matter where sold, with, as before stated, the formula added to determine the equivalent of such price where the gas is sold elsewhere than at the wellhead.

This is what the appellee Corporation Commission told the Supreme Court of Oklahoma in its answer brief in the *Panhandle Eastern Pipe Line Company* case, No. 35734, wherein appellee at page 12 said:

> "The Commission's order *did not fix the price of residue gas.* The Commission's order *did not fix a charge for gathering gas.* The Commission's order *did fix a price at the wellhead* for gas produced from the field and provided that no gas be produced unless sold at the well at that price, or unless *that price* be realized if not sold at the well. Since a substantial portion of the gas is not sold at the wellhead, *means for determining the realized price* had to be provided and the Commission's order *implemented the fixing of a wellhead price* by specifying an equivalent price if the gas was not sold until after it had been gathered or gathered and processed." (Emphasis supplied)

Thus it is that although it so happened that in the three former appeals the appellants purchased only residue gas, nevertheless since the order is not divisible but rather relates in its entirety to and is predicated

upon a basic wellhead price, of necessity the entire order was in issue.

Nor does appellant interpret the Court's opinion in the former appeals as being limited in its scope and effect to only a part of the gas covered by the order. In principle and effect the decision relates to and controls *all sales of gas* sold in interstate commerce for resale for ultimate public consumption and over which the Federal Power Commission has jurisdiction, whether sold at the wellhead, after gathering or as residue.

In its Jurisdictional Statement appellant has shown that the questions herein sought to be reviewed were raised and that appellant acted timely.

Appellant did not originally appeal from but instead supported the appellee's order as originally promulgated for two good reasons. First, because under the decisions by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, the appellant believed that appellee had the authority to enter the gas price order. Second, the order as drawn and originally promulgated by the appellee applied to all gas produced from the Guymon-Hugoton Field, no matter where sold, and provided appellant with the means of determining and obtaining the equivalent of the wellhead price for its gas sold or utilized elsewhere than at the wellhead, with the result that appellant was not injured thereby. Indeed, under these circumstances appellant could not have appealed. *Corning* v. *The Troy Iron and Nail Factory*, 56 U.S. 451, 465; *Crawshay* v. *Souter*, 73 U.S. 739.

It was not until the decision by this Court in the former appeals herein that it was first and finally de-

termined that the appellee was without authority to make the order because of the Natural Gas Act and the jurisdiction of the Federal Power Commission thereunder, and it was not until the Supreme Court of Oklahoma refused to comply with this Court's mandate and entered its order setting aside the gas price order *only* "insofar as sales of residue gas * * * under existing gas purchase contracts are concerned" that the appellant was for the first time stripped of the protection of the gas price order as originally drawn and for the first time became aggrieved.

It was then that appellant promptly raised and urged in the court below *all of the questions here presented,* both on petition for rehearing, by briefs in support thereof and oral argument thereon.

Although the court below did not enter a formal opinion in the matter, it effectively passed on such questions by denying appellant's petition for rehearing after having heard and considered the questions so raised. The dissenting opinion of one of the justices to the order of the court denying appellant's petition for rehearing (see Appendix "B" of appellant's Jurisdictional Statement) shows that the questions were raised and considered.

The court below in its orders herein complained of and which only partially reversed the gas price order of the appellee shows that in entering such orders it was laboring under the false impression that the opinion and mandate of this Court directed and required a partial reversal in that the court recites that "in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:" (see Appendix "A" of appellant's Jurisdictional Statement). The gas price order of the appellee as thus amended by the Supreme Court of

Oklahoma and which as so amended provides only a wellhead price without any formula or means of applying it to residue sales is an entirely different order from that originally promulgated by the appellee and an entirely different order from that previously in litigation. It is an order which appellee had found and had previously said could not be made effective and would be discriminatory.

Appellee in its joint brief with appellant in the former appeals to this Court, in referring to its order and to the facts and circumstances pertaining thereto, at pages 26 and 27 said:

> "The evidence before the Corporation Commission showed that *most gas* in the Guymon-Hugoton Field *is not sold at the wellhead* (R. 135). It also showed that *much of the gas which is not sold at the wellhead is processed by the producer* for the extraction of liquid hydrocarbons and that the *residue* is then sold during or at the conclusion of gathering (ibid). The Commission found that '*a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount* [*may be*] *realized for gas by producers operating gathering and processing plants*' (R. 136). Appellant does not challenge the evidence or this finding.
>
> "In the light of this evidence and finding the Corporation Commission *had* to adopt some formula *to be applied to gas sold away from the wellhead* and after processing as is the situation in the case of the sales by Panoma to appellant. *Otherwise no minimum price order in the Guymon-Hugoton Field could be effective.* The formula which the Commission did adopt is neither arbitrary nor unreasonable. *It is unrealistic to view it*, as appellant does, *as if it were some form of price regulation apart from and performing a*

different function from the one performed by the rest of the order.

"The order in its entirety, including the formula relating to sales made after gathering and processing, is a regulation of production." (Emphasis supplied)

At page 16 of the same brief appellee told this Court:

"The Corporation Commission found, and it is not questioned here, that the formula established in the present order *was necessary to the achievement of the purpose of the order.*" (Emphasis supplied)

Thus it is that the Supreme Court of Oklahoma, thinking that it was acting "in conformity with the mandate and opinion" of this Court, has by the orders now appealed from promulgated a new legislative order for the Corporation Commission which appellee itself previously found and said it would not have entered, one that applies to only a small part of the gas in the field and one that is discriminatory and cannot be made fully effective.

This Court should assert its jurisdiction herein, review its mandate and by a further opinion and mandate correct the erroneous interpretation by the Oklahoma Supreme Court of the former opinion and mandate herein. Or, in the alternative, this Court should review the new order as made by the judgments of the Oklahoma Supreme Court partially reversing the causes and should hold such order to be invalid.

Appellee at pages 8 and 9 of its motion to dismiss cites cases holding that a decision on appeal becomes the law of the case and that none of the questions before the Court are open for reconsideration on subsequent appeal. Such principle has no application here. Ap-

pellant is not asking that any question before the Court on former appeal be reconsidered and decided differently but rather that the decision and mandate of the Court in the former appeals be given effect.

At pages 12 and 13 of its motion to dismiss appellee contends that the invalidity of what appellee calls the "wellhead part" of its order was not urged in the original appeals in either the Oklahoma Supreme Court or this Court and cite cases holding that this Court will not decide questions the court below did not decide. Appellant has heretofore pointed out that there was originally no "wellhead part" of the order as promulgated by the appellee and why appellant did not in the original appeals attack the order as so constituted. That order, however, as amended by the partial reversal thereof by the Supreme Court of Oklahoma and which is now appealed from is an entirely different order. As disclosed by the record in these appeals, the questions *here raised* with respect to the order as so amended were presented to, considered and decided by the court below. It is from the action of the Oklahoma Supreme Court thereon that these appeals are taken.

In its motion to dismiss (page 14) appellee contends that the record herein does not include the necessary facts to decide the questions here presented, particularly whether the sales of gas by independent producers at the wellhead are sales in interstate commerce for resale for public consumption and whether, if such sales are in interstate commerce for resale for public consumption, they are within the production and gathering exemption of Section 1(b) of the Natural Gas Act. This is not true with respect to the gas produced from the Guymon Hugoton Field and particularly with

respect to the gas produced and purchased by appellant. The record here on appeal includes all of the material portions of the transcript of proceedings and evidence originally before the appellee Corporation Commission upon which the price order in its entirety was based, which includes not only ample evidence with respect to the operations, production, sale and disposition of gas by appellant but also ample evidence with respect to the production and disposition of gas generally in the Guymon-Hugoton Field. The evidence shows conclusively, about which there can be no dispute, that all of the gas produced and purchased by appellant is immediately transported in interstate commerce and sold for resale for ultimate public consumption (transcript of record on former appeals, pp. 64, 65, 71-74). No other facts are needed. Moreover, the same identical gas produced, purchased and sold by appellant was involved in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, and *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, wherein the facts setting out the production and purchase of gas by appellant at the wellhead and its transportation thereof into the State of Texas for processing and resale to interstate pipe line companies are set out in detail. This Court will take judicial knowledge of the records in those cases. *United States* v. *Pink*, 315 U.S. 203.

In its motion to dismiss (page 15) reference is made to certain pending Court of Appeals cases by appellee, stating that "the question of whether wellhead sales constitute interstate commerce and, if so, whether such sales are exempt under the production and gathering exemption" of the Natural Gas Act is in issue therein and that the Federal Power Commission is a party in those cases. Although appellant is not completely

familiar with the record in those pending cases, it is appellant's understanding that they do not involve any order of a state attempting to regulate wellhead prices but are concerned only with the details of the Federal Power Commission's jurisdiction over wellhead sales.

It should be pointed out that just as the parties to those pending appeals are not parties hereto, the appellant and appellees herein are not parties to those pending appeals. If the Court were to grant appellee's motion for dismissal and then later the Court of Appeals in those pending appeals holds that the Federal Power Commission had exclusive jurisdiction, the appellant would then be without recourse in respect to the order here in question inasmuch as it would then be final and no appeal could be taken. Appellant submits that it is entitled to have the questions in these appeals determined on the record herein, which is adequate for that purpose.

Appellee at page 17 of its motion to dismiss argues that there is no conflict between the minimum gas price order here involved and the regulations of the Federal Power Commission by urging judicial notice of the fact that pursuant to Federal Power Commission regulations producers in the Guymon-Hugoton Field have been permitted to file as their June 7, 1954 prices the minimum price of 9.8262¢ as fixed by the gas price order rather than their contract prices, which prices were accepted by the Federal Power Commission. Although the orders of the Federal Power Commission allow the producers a rate which is equivalent to the minimum price fixed by the Commission order and in effect on a certain date, nonetheless such orders of themselves show that the Federal Power Commission

is actually and in fact exercising jurisdiction over wellhead sales and wellhead prices of natural gas in the Guymon-Hugoton Field and that as a result there is a *conflict of jurisdiction* between the Federal Power Commission and the appellee even though particular orders may not at a particular time bring about conflict. It was such a conflict of jurisdiction that this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and in its opinion in the former appeals herein said could not exist. Therein this Court repudiated the argument that there can be no conflict of jurisdiction until the Federal Power Commission fixes a rate lower than the minimum price specified by the Oklahoma Corporation Commission.

At page 18 of its motion to dismiss appellee contends that what it calls the "wellhead portion" of the present gas price order, except for amount, is identical to the 7¢ order in the case of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, which the Court in that case sustained and for that reason the so-called "wellhead portion" of the present order should be sustained. As pointed out by this Court in its opinion on former appeal herein, the *Cities Service* case was decided solely on the basis of the constitutional questions as limited by the parties to that litigation and did not pass upon the question of the effect of the Natural Gas Act and the jurisdiction of the Federal Power Commission thereunder upon the validity of the 7¢ order. It was this question that was decided by this Court in these cases adversely to the contention of the appellee.

Whereas the appellee now contends that only the so-called "wellhead portion" of the 9.8262¢ order is identical to the 7¢ order in the *Cities Service* case, in the

former appeals it represented to this Court that the whole of the two orders is substantially identical (see Joint Brief of Appellees, *Natural Gas Pipeline Company of America* v. *Corporation Commission of the State of Oklahoma, et al.*, No. 321, October Term, 1954, at page 16). It there said that "the only difference between the two orders, therefore, is that the order challenged in this case makes explicit what was true by construction of the order upheld in the *Cities Service* case." This Court in *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, in effect held that the prior 7¢ order applied to all sales, including residue sales, by appellant and hence to that extent was no different from the later 9.8262¢ order. The fact that the decision by this Court on the former appeals herein likewise held invalid the 7¢ order is evidenced by the fact that in its opinion in *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44, this Court reversed the judgment of the Oklahoma Supreme Court sustaining the 9.8262¢ order and, for the same reasons, reversed a judgment by the Supreme Court of Oklahoma sustaining an order in favor of Panoma Corporation, which order was based almost completely, if not entirely, upon the original 7¢ order.

It follows and is made clear in the opinion of this Court in the former appeals herein that the difference between its decision in the *Cities Service-Peerless* case and its opinion in these cases was not based upon any difference in effect between the 7¢ order and the 9.8262¢ order as applied to either wellhead sales or sales of residue but the difference lies in the fact that in the present cases involving the 9.8262¢ order the Court considered the question of the Natural Gas Act and the jurisdiction of the Federal Power Commission which was not considered in the *Cities Service* case

because the parties there deliberately refrained from raising the question.

II.

Appellant Is Not Estopped by Its Prior Action From Urging the Issues Herein Raised

Under its Proposition II appellee seeks to leave the impression that the appellant was the prime mover in the promulgation of the gas price order. Such is wholly unsupported by the record and has no factual basis. The applicants for the order were a group of mineral and royalty owners, which fact is clearly shown by the record (transcript of record on former appeals, pp. 9 and 10). The appellant participated in the proceedings because it both produced and purchased large volumes of gas in the Guymon-Hugoton Field. Appellant therefore introduced evidence to show the equivalent wellhead prices for gas that was gathered and processed and sold as residue and recommended a form of order to be utilized if a price order was to be entered by the appellee. However, the record is clear that appellant did not recommend that a gas price order be promulgated. Rather it insisted that if such an order were to be promulgated it must of necessity apply to all gas produced from the Guymon-Hugoton Field, no matter where sold, and to protect the producer and purchaser which gathered and processed and sold the gas as residue, must contain the definitive and protective features of the order as promulgated (transcript of record on former appeals, pp. 79, 82 and 83).

As is pointed out above, appellant believed that under the *Cities Service* and *Phillips* cases the state had the authority to regulate at the wellhead the price of gas sold in interstate commerce so long as the gas price

order was not discriminatory and provided appellant with the means of determining and obtaining the equivalent of the wellhead price for its gas sold or utilized elsewhere than at the wellhead and appellant therefore supported the gas price order in the former appeals. This Court held that the state lacked such authority. However, the appellee and other producers in effect secured a new gas price order from the Supreme Court of Oklahoma. Appellant has at all times and at every opportunity opposed the new order, which is the subject of these appeals. Appellant therefore should not be estopped from following what this Court pronounced as the law with regard to the authority of the states to regulate the wellhead price of natural gas sold in interstate commerce.

III.

The Price Order Promulgated by the Supreme Court of Oklahoma Does Not Rest on an Adequate Non-federal Basis

Appellant's Jurisdictional Statement clearly shows that substantial federal questions are presented in these appeals. Appellee's entire argument under this point is based upon the contention (which we have shown above to be without basis) that the gas price order is separable and that appellant should have foreseen the possibility of the Oklahoma Supreme Court's noncompliance with this Court's mandate and raised the questions herein raised in the former appeals.

Moreover, appellee's argument fails to recognize the principle that one must be aggrieved or injured through a deprivation of his rights in order to have standing to attack the validity of a state statute, and the further related principle that this Court will not decide hypothetical or moot questions. Appellant clearly

raised the federal questions herein sought to be reviewed at the first opportune moment after it became aggrieved.

Appellant does not here assert that the question of separability of a state statute is not one for the state court. Appellee's reference to that question is wholly aside the point. It does not touch upon or answer the federal questions which appellant has raised herein as to the validity of the new, different gas price order in effect promulgated by the Oklahoma Supreme Court on the remand of the former appeals. Furthermore, appellee itself has admitted in its motion to dismiss that there is a conflict between the jurisdiction of appellee and of the Federal Power Commission over wellhead sales in the Guymon-Hugoton Field (see appellee's motion to dismiss at page 17). There can be no doubt that this presents a federal question.

CONCLUSION

Appellant respectfully submits that the motion to dismiss should be denied and that these appeals should be considered and disposed of on the merits along with other appeals involving the same issue.

Respectfully submitted,

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FILED
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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. [redacted]111

PHILLIPS PETROLEUM COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, Appellees.

No. [redacted]112

PHILLIPS PETROLEUM COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, Appellees.

No. [redacted]113

PHILLIPS PETROLEUM COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

ADDENDUM TO BRIEF IN OPPOSITION TO MOTION TO DISMISS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 953

PHILLIPS PETROLEUM COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, Appellees.

No. 954

PHILLIPS PETROLEUM COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, Appellees.

No. 955

PHILLIPS PETROLEUM COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

ADDENDUM TO BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellant requests permission to file this addendum to brief in opposition to the motion to dismiss in these cases to call attention to a relevant decision by the United States Court of Appeals for the Fifth Circuit handed down subsequent to the filing of appellant's principal brief in opposition to the motion to dismiss.

The decision to which reference is made is in the case of *Deep South Oil Co. of Texas v. Federal Power Commission*, No. 15849, in the United States Court of Appeals for the Fifth Circuit, entered June 29, 1957, and not yet officially reported.

In that case the Court held that "all interstate wholesale sales of natural gas," including sales by independent producers of raw natural gas at the wellhead before processing, are in interstate commerce and are subject to the "exclusive" jurisdiction of the Federal Power Commission. The Court further held that such sales are not within Section 1(b) of the Natural Gas Act exempting "the production and gathering of gas." Such decision is fully supportive of the position of appellant in these cases.

For the convenience of the Court a copy of the opinion in the *Deep South* case is attached.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15849.

DEEP SOUTH OIL COMPANY OF TEXAS,
PETITIONER,

versus

FEDERAL POWER COMMISSION, RESPONDENT.

Petition for Review of Orders of the Federal Power Commission, sitting at Washington, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This case comes to us on the petition of Deep South Oil Company of Texas to review, pursuant to Section 19(b) of the Natural Gas Act,[1] order of the Federal Power Commission determining that Deep South is a "natural-gas company" as that terms is defined in the Act.[2]

Deep South is a small, unintegrated corporation en-

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[1] 15 U.S.C. §717r (b).

[2] By Section 2(6) of the Natural Gas Act "natural-gas company" is defined to mean "a person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale."

gaged in the exploration for and the production of oil and gas. Its properties are located in the State of Texas, and its oil and gas facilities consist only of oil and gas well equipment, including flow lines, heaters and separators, together with such valves, tanks, and meters as are required for the operation of its wells and lines. As revealed by the record before us, Deep South owns or has an interest in and operates fourteen wells in the Big Hill Field located in Jefferson County, Texas. Five of these wells produce "casinghead gas"[3] and nine produce "full stream" or "gas well gas,"[4] and all of the gas from these wells which is not used in the field for drilling purposes by Deep South or other operators is sold to Texas Gas Corporation pursuant to a contract which was executed on February 15, 1952, for a term of twenty years. This agreement by its terms provide that the leases and lands which Deep South owns or acquires in the Big Hill area are "dedicated" to the performance of the contract, and that the gas shall be delivered at each of Deep South's wells located on the dedicated leases in a full stream, *in its natural state, without the extraction therefrom of any gasoor other liquefiable hydrocarbons.*[5] Prior to delivery under the contract, the "casing-head gas" is separated from the oil with which it is produced at a field separator, and the

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[3] "Casinghead gas" is gas that is produced along with oil from an oil well and ordinarily consists of fixed gases, principally methane in bulk with other hydrocarbons ranging from the lighter ones down to the quite heavy ones. Mixed with those hydrocarbons are water vapor, acid gases, hydrogen sulphide and carbon dioxide, in addition to other fairly common diluents such as nitrogen, helium, and various sulphur compounds, and impurities such as drilling mud, rust, sand and dirt.

[4] "Full stream gas wells," "straight gas wells," and "gas distillate wells" are synonymous terms and the gas produced therefrom is "gas well gas," which contains fewer liquefiable hydrocarbon than gas produced in association with oil.

[5] All italics herein our.

"full stream gas" is treated for the removal of water at a so-called "free-water knockout." Within a few feet from the point at which the gas leaves the aforementioned mechanical devices, it passes into Texas Gas' meters which are located on the leases near the wellheads from which the gas is produced. There it is measured and delivered and title thereto passes to Texas Gas. Thereupon the gas then moves from these metering points through a network of converging pipelines of progressively larger size to the purchaser's processing plant at Winnie, Texas, which is located about seven miles from the Deep South leases. During the course of this movement, the gas purchased from Deep South is commingled in the pipelines with gas which Texas Gas has purchased from other operators in the area. At the Winnie processing plant all of the casing head gas and gas well gas purchased by Texas Gas is processed for removal of water vapor and liquefiable hydrocarbons. After processing, the gas is discharged into a common sales header and pursuant to a contract between Texas Gas and Texas Eastern Transmission Corporation a portion of such gas flows into the latter's interstate transmission lines for transportation and resale in interstate commerce. This contract between Texas Gas and the pipeline company is for a minimum of fifteen years and by its terms the gas purchase contract between Deep South and Texas Gas and the gas which may be produced from the lands and leaseholds covered thereby are "dedicated" to the performance of the contract between Texas Gas and Texas Eastern.

The proceeding before the Commission which gave rise to this petition for review was initiated by Deep South when, in conformity with Rule 1.7(c) of the Commission's Rules of Practice and procedure, it filed a petition for a

declaratory order[6] in which it requested the Commission to declare that petitioner's sales of natural gas to Texas Gas are not subject to regulation under the Natural Gas Act, 15 U.S.C. §§717-717w, and that petitioner is not a "natural-gas company" within the meaning of the Act or subject to the provisions of the Commission's Order No. 174-A.[7] This proceeding, Commission's Docket No. G-2952, was consolidated for the purposes of hearing with proceedings on two similar petitions filed by Shell Oil Company and Humble Oil & Refining Company, Commissioner's Docket Nos. G-4671 and G-5261, respectively. After a hearing and upon the facts of record, the presiding examiner decided that petitioners' sales of gas, and each of them, were sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act, and that by reasons of such sales, each of the petitioners was a "natural-gas company" subject to regultaion under the provisions of the Act. Accordingly, petitioners' respective prayers for declaratory relief were denied.

Deep South, Shell, and Humble Oil thereupon filed exceptions to the decision of the presiding examiner and the Commission, after hearing oral argument thereon, issued on September 9,1955, its Opinion No. 284 and accompanying order affirming the decision of the examiner for

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[6]In its amended and supplemented petition Deep South sought declaratory relief from the Commission with respect to a sale made from a single gas well in Refugio County, Texas. Subsequent to the hearing before the presiding examiner this well became exhausted, the equipment was dismantled and all deliveries of gas from the well discontinued. For that reason, Deep South withdrew its request for relief with respect to this well, the withdrawal being made at the time of the argument before the Commission. The Commission's opinion and order contain references to this well, but the questions relating to it are now moot and are not referred to in Deep South's petition for review or discussed in its brief.

[7]See **Magnolia Petroleum Company v. Federal Power Commission**, 5 Cir., 236 F. 2d 785, cert. denied 352 U.S. 968, for a discussion of Order No. 174-A

the reasons therein stated. In its opinion the Commission noticed the fact that these consolidated proceedings presented to it for the first time the question whether sales of natural gas made before the completion of "production and gathering" are exempt from the Natural Gas Act by reason of the exclusionary provision of Section 1(b) of the Act. In resolving this question the Commission rejected petitioners' claim sthat "casinghead gas" is not "natural gas" within the meaning of the Act, and expressly affirmed the examiner's conclusion that there is nothing in the Natural Gas Act which supports petitioners' assertion that regulation under the Act is confined to fuel gas which consists "almost entirely of methane and ethane." Likewise, the Commission concluded that there was no merit in the contention that the sales in question are for "manufacture" and not for "resale." And, on the basis of its finding that the entire movement of the gas from the producing wells through the processing plants to consumers in other states is an uninterrupted and continuous flow, the Commission determined that the gas which is sold by petitioners is sold "in interstate commerce." Finally, the Commission concluded that none of the sales is exempt from regulation under the Act for the reason that the exemptive language of Section 1(b) does not nullify the clear and specific grant of jurisdiction over "sales of natural gas in interstate commerce for resale." Thereafter and agreeable to the provision of Section 19(a) of the Act, petitioners filed applications for rehearing of this order, which applications were on November 4, 1955, denied by order of the Commission. Whereupon, Deep South, Shell, and Humble Oil, each filed a petition for review,* praying that the orders of September 9 and No-

*Shell Oil Company's petition for review has been docketed as cause No. 15,900 and Humble Oil & Refining Company's petition has been docketed as cause No. 15,884. The three cases were consolidated for purposes of argument and submission by order of Court entered June 25, 1956, however, separate opinions and judgments will be filed and entered in each case.

vember 4, 1955, be set aside in their entirety and that this Court further determine and declare that petitioner is not a "natural-gas company" within the meaning of the Act and that its sales are not subject to the jurisdiction of the Commission.

In this review proceeding as in the proceeding which was had before the Commission, Deep South raises two issues. The first and principal point urged is that the sales made by it are not within the specific affirmative grant of jurisdiction to the Commission over sales "in" interstate commerce, for the reason that all of the relevant circumstances establish that they are "local" in character. We do not agree. In our opinion the statutory language, its legislative history and prior decisions of the Supreme Court compel a contrary conclusion. When the Act was passed in 1938, Congress declared the national policy in doing so as follows:

> "Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

In the hearings which were had before the House Committee on Interstate and Foreign Commerce prior to the adoption of the Act, Congress was fully informed as to the need for such regulation and among other considera-

tions it was cognizant of the fact that the prices at which local distributing companies can sell gas are in very large part determined by the prices they are required to pay for the same to interstate pipeline companies. It was strongly urged to Congress that the public cannot be protected from exploitation in the prices charged for natural gas unless Government shall control not only the price charged by the companies which deliver the gas to the consumer, but also the prices of all companies which cooperate in bringing the gas from the wells in the state of production to the ultimate consumer in the state of distribution." The Committee reports on the bill which became the Natural Gas Act specifically stated that "sales for resale, or so-called wholesale sales in interstate commerce *(for example, sales by producing companies to distributing companies)* . . . have been considered [by the courts] to be not local *in character*, and even in the absence of Congressional action not subject to State regulation."[10] Accordingly, Congress provided in Section 1(b) of the Act the following:

> "*The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption . . . and to natural-gas companies engaged in such transportation or sale*, but shall not apply to any other transportation or sale of natural gas . . . or to the production or gathering of natural gas."

"Natural gas" is defined in Section 2(5) of the Act to mean "either natural gas unmixed, or any mixture of nat-

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[9] Hearings before House Committee on Interstate and Foreign Commerce on H.R. 4008, 75th Cong., 1st Sess. p. 142.

[10] H.R. Rep. No. 709, 75th Cong., 1st Sess. 1-2. S. Rep. No. 1162, 75th Cong., 1st Sess. 1-2.

ural or artificial gas," and in Section 2(7) "interstate commerce" is defined as "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

In numerous decisions, the Supreme Court has recognized that the Act was primarily designed to protect consumer interests against exploitation at the hands of private natural gas companies, and with particular reference to sales by independent producers the Court, in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 682, said:

> " . . . we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."

And in emphasizing the purpose of the Natural Gas Act to protect consumers, the Court at page 685 observed that:

> "Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from the regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natual-gas companies was the primary aim of the Natural Gas Act. *Federal Power Commission v. Hope Natural Gas Co., supra*, at 610. Attempts to

> weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a strained interpretation of the existing statutory language."

Having in mind the obvious purpose of Congress which was to see that there was effective regulation of all interstate wholesale sales of natural gas, it would be an exceedingly incongruous result if a statute so motivated and planned to bring about such regulation were construed so as to obtain the opposite result. To hold, as petitioner would have us do, that it may set up its own interests in complete freedom from regulation of the price of its wholesale sales would be to permit it, if it were so inclined, to engage in the every exploitation which the Act was designed to prevent. We cannot therefore subscribe to the view that the Act contemplates that petitioner or any other independent producer should be free of price regulation, if it is engaged in the sale in interstate commerce of natural gas for resale.

As to petitioner's claim that its sales are "local" in character, we think it plain that they are sales "in interstate commerce" for the obvious reason that the sale of gas originating in one state and its transmission and delivery to distributors in any other state constitutes interstate commerce. *Federal Power Commission v. Natural Gas Pipeline Company of America*, 315 U.S. 575, 582. *Cf. Federal Power Commission v. East Ohio Gas Co.*, 338 U.S. 464, 467. The fact that the sales are made at the wellhead is immaterial for the particular point at which the title and custody of the gas pass to the purchaser, without arresting its movement to the ultimate interstate destination, does not affect the essential interstate nature

of the business: *Illinois Gas Co. v. Public Service Co.*, 314 U.S. 498, 503-504. Here, petitioner's own brief testifies eloquently to the continuous movement of the gas which it sells at the wellhead. Petitioner admits, as, of course, it must, "that there is a continuous flow of gas from the Deep South wells into the gathering system of Texas Gas; that the mass of gas of which the Deep South gas becomes a part moves continuously through the gathering system into a processing plant; that the movement through the processing plant is continuous; that there is a continuous movement of natural gas from the outlet of the processing plant to both interstate and intrastate destinations. . . ." Accordingly, and in the light of all of the uncontroverted facts, we hold that when the gas was sold by petitioner it had commenced its journey in interstate commerce.

We are likewise not more impressed than was the Commission with the claim that petitioner's sales were made for "manufacture," not for "resale." This contention is made notwithstanding the fact that all of the parties to the contract between Deep South and Texas Gas fully understood that the gas was to be resold in wholesale quantities by the buyer. In the conduct of its business, petitioner sells its gas in bulk to Texas Gas. Texas Gas in turn and at the tailgate of its processing plant resells the gas which it purchases from petitioner to an interstate transmission company for resale, as well as to intrastate customers. The inescapable fact here then is that at least some portion of the gas sold by petitioner is resold to consumers outside the State of Texas. Consequently, there can be no question that petitioner is making sales for resale within the meaning of the Act. Nor is it of significance that the gas in the course of its interstate transmission passes through Texas Gas' processing plant. The processing herein involved is not an interruption of the

interstate journey and is not "manufacture." On the contrary, as noted above, the processing does not interrupt the continuous movement of the gas from the wellhead to consumer burner tips and is merely a part of the business of transporting and marketing gas in interstate commerce. *City of Detroit v. Federal Power Commission*, D.C. Cir., 230 F. 2d 810, 820, cert. denied 352 U.S. 829. *Cf. Cities Service Gas Co. v. Federal Power Commission*, 10 Cir., 255 F. 2d 694, cert. denied 329 U.S. 773.

Petitioner also insists that the casinghead gas which it sells is not "natural gas" within the meaning of the Act. For answer we deem it sufficient to say that there is nothing in the general language used in the definition of "natural gas," quoted above, which suggests that a special or narrow or unnatural definition of "natural" was meant. Boone's Petroleum Dictionary (1952) defines natural gas as *a mixture of gaseous hydrocarbons found in nature* in many places connected with deposits of petroleum, to which the gaseous compounds are closely related. The record in this case shows that the principal constituents of natural gas which is used as a domestic or industrial fuel are methane and ethane; that casing-head gas contains methane and ethane, as well as other constituents that are valuable, such as propane, butane, and the heavier components that comprise natural gasoline; and that it is economically desirable to remove these additional components for their value. The gas sold by petitioner contains the methane and ethane which constitutes the bulk of fuel gas distributed to domestic, commercial and industrial consumers. And the extraction process to which the gas is subjected after delivery under the sales contract does not create or add to the product any amount of either of those components. Thus, it is plain that casinghead gas is not any the less "natural" gas because it contains variable amounts of other contituents.

The petitioner alternatively contends, however, that regardless of whether the sales in question are sales in interstate commerce, the transactions fall within the clause of Section 1(b) of the Act which specifically excepts from the Commission's jurisdiction the regulation of ". . . the production or gathering of natural gas." We do not at all agree, but on the contrary think that our observations in *Interstate Natural Gas Company v. Federal Power Commission*, 156 F. 2d 949, 951, supply a ready answer to this contention. There, in speaking of Section 1(b), we said:

> "[The Act] is very simply and plainly written. After stating what it shall apply to, it then states what it shall not apply to. Under familiar rules of construction a negation in or exception to a statute will be construed so as to avoid nullifying or restricting its apparent principal purpose and the positive provisions made to carry them out. . . . Here the statute was drawn to regulate, it picked out for inclusion 'sale in interstate commerce of natural gas for resale for ultimate public consumption.' . . . Unnecessarily perhaps but in the interest of making clear that the act gave jurisdiction only over sales and transportation of the kind described in it, it used language removing from any doubt that the Commission was not to have jurisdiction over properties used for production and local distribution or the activities of production and gathering. It did this by expressly providing that the act should not apply "to the facilities used for such [i.e. local] distribution or to the production or gathering of Natural gas.' "

The exemption of production and gathering merely means that the physical activities, facilities and properties used by petitioner in the production and gathering of natura

gas are not within the commission's power of regulation. However, there is nothing in the Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in intestate commerce which are consummated before the gas has been gathered or processed should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate.

Petitioner argues, however, that what is involved here is "more than merely regulation of sales," for the reason that our decision herein will give rise to certain hypothetical situations predicated upon assumed future actions by the Commission, viz., that should certificates of public convenience and necessity which petitioner will apply for be refused, Deep South must close its wells and suspend operations, and that petitioner must obtain the Commission's permission before discontinuing sales from a well which has been found subject to Federal jurisdiction. No such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented.

In the light of the foregoing it follows that the order of the Commission declaring Deep South Oil Company of Texas to be a "natural-gas company" within the meaning of the Natural Gas Act should be and the same hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to be filed.

Office Supreme Court, U.S.
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Nos. 111- 113

In the SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

Nos. [redacted], and [redacted]

PHILLIPS PETROLEUM COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellees.

PHILLIPS PETROLEUM COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellees.

PHILLIPS PETROLEUM COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

MOTION OF APPELLEE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA TO DISMISS

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In the
Supreme Court of the United States
October Term, 1956

Nos. ....., ..., and .....

PHILLIPS PETROLEUM COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellees.

PHILLIPS PETROLEUM COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellees.

PHILLIPS PETROLEUM COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

MOTION OF APPELLEE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA TO DISMISS

Appellee, the Corporation Commission of the State of Oklahoma, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss the appeals of Phillips Petroleum

Company in the above-entitled cases on the grounds (a) that the federal questions sought to be reviewed were not timely raised or expressly passed on; (b) that the position previously taken by Phillips with respect to this litigation and to Order No. 26096 estops Phillips from urging the issues which it now seeks to raise and such issues are accordingly not properly raised; and (c) that the Orders of the Oklahoma Supreme Court from which Phillips seeks to appeal rest on an adequate non-federal basis.

STATEMENT OF CASE

Appellant, Phillips Petroleum Company, hereinafter referred to as "Phillips", is a natural gas company and is a substantial producer of natural gas in the Guymon-Hugoton Field involved herein. In addition, Phillips has contracts with other producers in the field for the purchase of their gas at the wellhead, which it gathers, processes, handles and resells.

Order No. 26096 of the Corporation Commission of the State of Oklahoma, entered on July 29, 1952 (this order is set out in full as Appendix "C" to Phillips' Jurisdictional Statement) fixed a minimum price for sale of natural gas produced from the Guymon-Hugoton Field in Oklahoma as a condition to the production of gas from this area. This Order was divided into several parts, the first of which provided that no gas should be produced, if such gas was to be sold at the wellhead at a price of less than 9.8262 cents per m.c.f. and no gas should be produced if such gas to be sold off the lease or drilling unit or otherwise utilized at a

price equivalent to less than 9.8262 cents per m.c.f. at the wellhead. The latter portion of the Order (which was the only part of the Order involved in the appeals therefrom) provided that if gas is processed for extraction of liquid hydrocarbons and sold at the conclusion of processing, the price for the residue gas should not be less than 9.8262 cents per m.c.f.

Appeals from this Order were docketed in the Oklahoma Supreme Court in three companion cases (Nos. 35731, 35732 and 35734). These cases from the beginning were briefed, argued and considered on a single record. In the appeals to the Oklahoma Supreme Court (Opinion reported in 272 P.2d 425) and in the appeals to this Court (Cause Nos. 320, 321 and 322, October Term, 1954, Opinions reported at 349 U.S. 44, 75 Sup. Ct. 578, 349 U.S. 908, 75 Sup. Ct. 598; 349 U.S. 908, 75 Sup. Ct. 598) the appellants raised only the question of the validity of the Corporation Commission's Order insofar as it applied to the sales of *residue* gas made directly into an interstate pipeline at the outlet side of a gasoline plant after completion of production, gathering and processing. (Page 4 of Michigan-Wisconsin Pipe Line Company's and Natural Gas Pipeline Company of America's Joint Statement as to Jurisdiction in Causes Nos. 320 and 321, and pages 4 and 5 of Panhandle Eastern Pipe Line Company's Statement as to Jurisdiction in Cause No. 322, all in October Term, 1954). Phillips was not an appellant in these appeals, but instead participated as an appellee urging the validity of the Order.

This Court ruled (349 U.S. 44, 75 Sup. Ct. 578; 349 U.S. 908, 75 Sup. Ct. 598; 349 U.S. 908, 75 Sup. Ct. 598) that the

attempt by the Oklahoma Corporation Commission to fix a minimum price for appellants' purchases of residue gas was invalid. The opinion in Case No. 321 was rendered on April 11, 1955, and on the same day this Court rendered an opinion identical in language to that which it used in Case No. 321 in the case of *Natural Gas Pipeline Company* v. *Panoma Corp.*, 349 U.S. 44, 75 Sup. Ct. 576 (1955), a case which also dealt with the sale of residue gas to an interstate pipeline company at the outlet of a gasoline plant after the completion of production, gathering and processing. The opinions in Cases 320 and 322 were rendered on April 18, 1955, and were decided by reference to the *Panoma* case. In the *Panoma* case and in Case No. 321 this Court stated (75 Sup. Ct. 576 and 75 Sup. Ct. 578) that it was dealing with a situation where Oklahoma had attempted "to fix a minimum price to be paid for natural gas, after its production and gathering has ended by a company which transports the gas for resale in interstate commerce." This Court then stated that "such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission" (349 U.S. 44, 45); citing *Phillips Petroleum Co.* v. *Wis.*, 347 U.S. 672, 74 Sup. Ct. 794 (1954), a case which also involved sales of *residue* gas to an interstate pipeline company, which sales occurred at the outlet side of a gasoline plant after gathering and processing had been completed.

By its Orders on Mandate on October 8, 1956, and December 4, 1956 (these orders are set out in full as Appendix "A" of Phillips' Jurisdictional Statement filed on this appeal), the Oklahoma Supreme Court fully complied with

this Court's orders of reversal and set aside Order No. 26096 insofar as it pertained to the original appellants' purchases of *residue* gas. The Oklahoma Supreme Court justly refused, however, to go beyond this Court's order by invalidating that portion of Order No. 26096 which fixed a minimum price at the wellhead for gas produced in the Guymon-Hugoton Field of Oklahoma.

Phillips now urges that this Court's orders require that the wellhead portion of Order No. 26096 be invalidated, despite the fact that the validity of the wellhead part of the Order was never placed in issue before this Court or before the Supreme Court of Oklahoma in the initial appeals to that Court. This is the same Phillips who has urged, both in this Court and in the Oklahoma Supreme Court, the validity of even that portion of Order No. 26096 which fixed a minimum price for the original appellants' purchases of residue gas and who has stated that all parties are agreed that the Oklahoma Corporation Commission has the authority to prescribe the minimum price a producer must realize as a condition to production of gas (see page 10, Motion of Appellee Phillips Petroleum Company to Dismiss, October Term, 1954).

Of the three appellants making the original appeals to the Oklahoma Supreme Court and then to this Court, only one, Michigan-Wisconsin Pipe Line Company, has appealed from the action taken by the Oklahoma Supreme Court pursuant to the order of reversal of this Court. Indeed, all three of the Oklahoma Supreme Court's orders on mandate were issued in the same form as the proposed order which was submitted by Panhandle Eastern with its request for

mandate. (A copy of Panhandle Eastern's proposed order is attached hereto as Appendix "A"). Michigan-Wisconsin initially approved of the form of order on mandate proposed by Panhandle Eastern. It did not withdraw its approval until after the order on mandate had been entered, when it filed a brief in support of Phillips' petition for rehearing. At page 2 of that brief Michigan-Wisconsin explained that it had approved of the suggested form of order because "Michigan-Wisconsin was interested only at that time in obtaining relief from interference with contracts under which it purchased residue gas from Phillips"; and in a later brief filed in the Oklahoma Supreme Court on December 1, 1956, Michigan-Wisconsin explained that "It was the feeling of Michigan-Wisconsin that the only issue before the Supreme Court of the United States was whether the order was valid as applied to the operations of the appealing companies, and the proposed form of the order was accordingly so restricted." Thus, Michigan-Wisconsin has in effect conceded that the order on mandate as entered accomplishes the ends it sought to obtain in taking its original appeal to this Court. The reaction of the three successful appellants in the original appeals to this Court demonstrates with unimpeachable force that the Oklahoma Supreme Court properly and fully complied with this Court's orders of reversal. Nevertheless, Phillips, former advocate of the validity of Order No. 26096, by alleging a failure of the Oklahoma Supreme Court to comply with the orders of this Court, now seeks to raise new questions which are not and have never been involved in this litigation by urging that the wellhead portion of Order No. 26096 must be declared to be invalid.

Proposition I.

The Federal Questions sought to be reviewed were not timely raised or expressly passed on.

In the original appeals to the Oklahoma Supreme Court and in the original appeals to this Court, the parties raised only the issue of the validity of that portion of Order No. 26096 which fixed a minimum price for sales of residue gas to an interstate pipeline company made at the outlet side of a gasoline plant after gathering and processing had been completed. By this appeal Phillips seeks to attack the wellhead portion of Order No. 26096 thereby raising wholly new and foreign issues which have never been a part of this litigation. Phillips states as one of its propositions that it is questioning whether the Oklahoma Supreme Court has properly complied with this Court's orders. It is true that, if issues germane to this proposition were actually presented, this Court should consider such issues. However, examination of Phillips' Jurisdictional Statement filed on this appeal reveals that Phillips makes the assertion of the failure to comply with this Court's orders merely as a point of departure from which it hopes to persuade this Court to hear the new issues with which Phillips at this late date seeks to attack the wellhead portion of Order No. 26096. Not one sentence of Phillips' Jurisdictional Statement complains of the manner in which the Oklahoma Supreme Court dealt with that portion of Order No. 26096 which affected the sales of residue gas forming the sole issues in these cases. Phillips' attack here is not based upon the Oklahoma Supreme Court's failure to comply with the orders of reversal

of this Court but is in fact based upon the refusal of the Oklahoma Supreme Court to go beyond the orders of this Court and beyond the issues presented in this litigation. This appeal should be recognized for what it is, an attempt to raise new issues by an attack on the wellhead portion of Order No. 26096.

This appeal brings up for revision nothing but the proceedings subsequent to this Court's mandates on the first appeals and does not afford Phillips the opportunity to reopen these cases to new issues which might have been but were not raised in the initial appeals to the Oklahoma Supreme Court and the initial appeals to this Court. This Court clearly expressed this rule in the case of *United States* v. *Juan Pedro Camou*, 184 U.S. 572, 22 Sup. Ct. 505, 506, 46 L. Ed. 694, 695 (1901), when it stated:

> "Upon this second appeal we have only to consider whether the court of private land claims reached its final decree in due pursuance of the previous opinion and mandate of this court. The decision there made is the law of the case, and is not open for reconsideration in the subsequent appeal. This subject was recently considered in *Illinois ex rel. Hunt* v. *Illinois C. R. Co.*, 184 U.S. 77, *ante*, p. 300, 22 Sup. Ct. Rep. 300, and it was there shown that it is the settled law of this court that, after a case has been brought here and decided, and a mandate issued to the court below, if a second writ of error is sued out, it bring up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the court on the first writ of error can be reheard or examined on the second. To allow a second writ of error or appeal to a court of last resort on the same

questions which were open to dispute on the first would lead to endless litigation."

See also *United States* v. *New York Indians*, 173 U.S. 464, 19 Sup. Ct. 487 (1899); *Thompson* v. *Maxwell Land Grant and R.R. Co.*, 168 U.S. 451, 18 Sup. Ct. 121 (1897); *Stewart* v. *Solomon*, 97 U.S. 361, 24 L. Ed. 1044 (1878).

That the wellhead-portion of the Order was not in issue before the Supreme Court of Oklahoma is clearly shown by the statement made in that Court's opinion, *Natural Gas Pipeline Co.* v. *Corporation Commission*, 272 P.2d 425, 432 (Okla. 1954), where it states:

"All parties concede that under the cases cited above the Commission can fix the price of gas *as taken from the structure*" (Emphasis ours).

It is made equally clear by their Statements as to Jurisdiction filed in this Court that the parties in the original appeals to this Court did not raise in issue the validity of the wellhead portion of Order No. 26096. The Statement as to Jurisdiction filed jointly in Cases Nos. 320 and 321 at page 4 specified the questions presented to this Court as follows:

"1. Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Constitution of the United States (Art. I, Sec. 8, Cl. 3) and the Natural Gas Act (15 U.S.C. 717, *et seq.*), to *fix the price of residue gas* sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for *residue gas obtained* therefrom is not obtained.

"2. Whether, *as applied to Michigan-Wisconsin*, the Commission's order fixing the price of *residue gas* sold in Texas is an attempt to exercise extraterritorial jurisdiction and violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

"3. Whether, *as applied to appellants*, the Commission's order is arbitrary and unreasonable and abrogates private contracts for no public purpose, contrary to the Due Process Clause of the Fourteenth Amendment and the Contract Clause (Art. I, Sec. 10) of the Constitution of the United States" (Emphasis ours).

The Statement as to Jurisdiction in Cause No. 322 at page 4 specified the questions presented to this Court as follows:

"1. Whether the Order of the Corporation Commission of Oklahoma, fixing the price of *residue gas*, as applied to the operations of appellant in purchasing such *residue gas* at wholesale in the State of Texas for immediate and continuous flow through its interstate pipeline system to markets in other states, violates the Commerce Clause of the Federal Constitution.

"2. Whether the Order of the Commission as applied to appellant's purchase of *residue gas* in the State of Texas is an unlawful attempt to exercise extraterritorial jurisdiction by the Oklahoma Commission in the State of Texas in violation of the Fourteenth Amendment to the Federal Constitution.

"3. Whether the Commission's Order fixing the price of *residue gas*, as applied to the operations of appellant, is in violation of the Fourteenth Amend-

ment to the Federal Constitution by taking the property of appellant and giving it to another (Phillips Petroleum Company) without due process of law and without a justifying public purpose or reciprocity of advantage, and in denying to appellant the equal protection of the law.

"4. Whether, as applied to appellant, the Commission's Order fixing the price of *residue gas* impairs the obligations of appellant's subsisting contract with Phillips Petroleum Company in violation of the Contract Clause of the Federal Constitution (Art. I, Sec. 10)." (Emphasis ours).

Phillips itself recognized that the wellhead portion of the Order was not in issue in these cases when it stated at page 10 of its Motion to Dismiss in Cases Nos. 320, 321 and 322 (October Term, 1954) that:

> "All are agreed that under the decisions of the Oklahoma Supreme Court and this Court in the *Cities Service* and *Phillips* cases, *supra*, the State of Oklahoma, acting through the Corporation Commission, has the authority to prescribe the minimum price *a producer must realize* as a condition to production of the gas, even though the gas when produced moves directly in interstate commerce. The regulation is of the production, not of the sale.";

and when it stated at page 3 of its said Motion to Dismiss that:

> "Appellants did not below and do not here question the validity of the 7¢ order nor the decision of this court sustaining the same."

The 7-cent order to which Phillips had reference was that order of the Oklahoma Corporation Commission fixing a

minimum price of 7 cents per m.c.f. at the wellhead for gas produced from the Guymon-Hugoton Field in Texas County, Oklahoma, which was upheld by this Court in the case of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 71 Sup. Ct. 215 (1950). The wellhead portion of Order No. 26096 is, except for the amount of the minimum price, virtually identical with said 7-cent order.

Since the invalidity of the wellhead part of the Order was not urged in the original appeals in either the Oklahoma Supreme Court or this Court, the question may not properly be raised at this time. In *Walters* v. *City of St. Louis, Mo.*, 347 U.S. 231, 233, 74 Sup. Ct. 505, 507, 98 L. Ed. 660 (1954), it was stated:

> "Of course, we will not undertake to review what the court below did not decide."

And in McGoldrick v. *Compagnie Generale Transatlantique*, 309 U.S. 430, 434-435, 60 Sup. Ct. 670, 672-673, 84 L. Ed. 849 (1940), this Court said:

> "But it is also the settled practice of this Court, in the exercise of its appellate jurisdiction, that it is only in exceptional cases, and then only in *cases coming from the federal courts*, that it considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below. *Blair* v. *Oesterlain Co.*, 275 U.S. 220, 225, 48 S. Ct. 87, 88, 72 L. Ed. 249; *Duignan* v. *United States*, 274 U.S. 195, 200, 47 S. Ct. 566, 568, 71 L. Ed. 996. In cases coming here from state courts in which a state statute is assailed as unconstitutional, there are reasons of peculiar force which should lead us to refrain from deciding questions not presented or decided in the highest court of the state whose judicial

> action we are called upon to review. Apart from the reluctance with which every court should proceed to set aside legislation as unconstitutional on grounds not properly presented, due regard for the appropriate relationship of this Court to State courts requires us to decline *to consider and decide questions affecting the validity of state statutes not urged or considered there*. It is for these reasons that this Court, where the constitutionality of a statute has been upheld in the state court, consistently refuses to consider any "grounds of attack *not raised or decided in that court*". (Emphasis ours).

This Court has long and consistently held that it will not consider questions on appeal if they were not raised in the state courts. *Congress of Industrial Organizations* v. *McAdory*, 325 U.S. 472, 65 Sup. Ct. 1395 (1945); *New York ex rel. Cohn* v. *Graves*, 300 U.S. 308, 317, 57 Sup. Ct. 466, 469, 81 L. Ed. 666 (1937); *Whitney* v. *California*, 274 U.S. 357, 362-363, 47 Sup. Ct. 641, 643-644, 71 L. Ed. 1095 (1926); *Keokuk & Hamilton Bridge Co.* v. *Illinois*, 175 U.S. 626, 633, 20 Sup. Ct. 205, 208, 44 L. Ed. 299 (1900); *Dewey* v. *Des Moines*, 173 U.S. 193, 19 Sup. Ct. 379, 43 L. Ed. 665 (1899).

Phillips seeks to have this Court now decide, as a by-product of this case and after this case has been litigated through both the Supreme Court of the State of Oklahoma and this Court, a question which it did not raise in the original appeals to the Oklahoma Supreme Court and to this Court and yet a question which involves matters of tremendously vital consequence to the entire natural gas industry. Phillips asks this Court to decide at this time, in this casual manner and in a case where the question has

not been properly raised or the necessary facts for a decision included in the record, the questions (1) of whether sales of natural gas by independent producers at the wellhead are sales in interstate commerce for resale for ultimate public consumption, if the gas ultimately crosses a state line, and (2) of whether, if such sales are in interstate commerce for resale for ultimate public consumption they are within the production and gathering exemption of Section 1(b) of the Natural Gas Act, 15 U.S.C.A. 717(b). Indeed Phillips in its Jurisdictional Statement filed on this appeal appears to assume that it is settled that such sales are sales in interstate commerce and are not within the production and gathering exemption; yet we have been unable to find any case, and we submit that there is none, so holding with respect to such sales. Appellee does not admit that sales of gas at or near the wellhead are sales in interstate commerce. If such sales are in interstate commerce, then appellee does not admit that they are not covered by the production and gathering exemption contained in Section 1(b) of the Natural Gas Act.

Being confined as it is to factual situations involving exclusively sales of residue gas from gasoline plants, that is, sales made after production, gathering and processing have been completed, the record presented to this Court in the prior appeals can hardly be said to afford an adequate basis for passing on whether wellhead sales are sales in interstate commerce for resale or whether such sales are covered by the production and gathering exemption. In the case of *Hughes* v. *Wendel*, 317 U.S. 134, 63 Sup. Ct. 103 (1942), this Court stated that when the record is inade-

quate to determine questions sought to be raised, the appeal must be dismissed.

Cases presenting these points on adequate factual records are pending in the United States Court of Appeals for the Fifth Circuit on appeal from the Federal Power Commission. For example, *Deep South Oil Co.* v. *F.P.C.*, No. 15849; *Shell Oil Company* v. *F.P.C.*, No. 15900; and *Humble Oil and Refining Company* v. *F.P.C.*, No. 15884, all involve the question of whether wellhead sales constitute interstate commerce and, if so, whether such sales are exempt under the production and gathering exemption. These cases are awaiting disposition, having been argued on April 8, 1957. The Federal Power Commission is a party to those cases. So are independent producers whose rights would be radically affected if Phillips' unwarranted assumptions were to be indulged in here. The parties are not, under the circumstances, appropriate parties to litigate those issues. Whatever decision may be applicable to those issues, it ought to be established in cases dealing directly with those issues rather than with them incidentally. The record in this case deals only with residue sales made after production, gathering and processing have ceased. How can it be argued that this record provides an adequate basis for decision on issues relating to wellhead sales?

Phillips attempts to conjure up a conflict between the Regulations of the Federal Power Commission and Order No. 26096 as applied to wellhead sales. In doing so, it asks the Court to take judicial notice of the 174 series of orders adopted by that Commission. It should be noted that the 174-orders merely apply to sales of natural gas in inter-

state commerce for resale without in anywise attempting to determine whether wellhead sales of gas which ultimately crosses a state line are sales of gas in interstate commerce for resale, and, if so, whether such sales are covered by the production and gathering exemption. Those questions were reserved by the Commission for determination in individual cases on factual records. They are still in the process of being decided.

Not knowing whether wellhead sales would ultimately be held by the Commission and the courts to be sales of gas in interstate commerce for resale and, therefore, subject to the jurisdiction of the Federal Power Commission unless they fall within the production and gathering exemption, the independent producers filed their wellhead contracts with the Federal Power Commission under protest, reserving the right to contest its jurisdiction in the hearings relating to the issuance of Certificates covering such sales. Under the circumstances, the producers could hardly have done otherwise. As this Court is fully aware, appeals taken from and suits in equity attacking, among other things, the 174-orders insofar as wellhead sales were concerned, were held in several cases to be premature. Being at that time unable to litigate the question whether wellhead sales were in interstate commerce or were exempt as a part of production and gathering, the independent producers had the unhappy choice of either filing on such sales or of running the risk of violating not only the Commission's Regulations but the Natural Gas Act itself. Violations of either would subject a producer who guessed incorrectly what the law was to fines and other penalties quite onerous in character.

Judicial notice will disclose that the Federal Power Commission regulations provided that with respect to each sale of gas covered by them the price in effect on June 7, 1954, the date of the decision in *Phillips v. Wis., supra*, was the contract rate applicable under the Natural Gas Act to such sale until it was changed as provided in that Act. On June 7, 1954, the price being collected by independent producers for wellhead sales to Phillips and others in the Guymon-Hugoton Field of Oklahoma was 9.8262 cents at 14.65 psia. Consequently the producers in compliance with the 174-orders filed that price with the Federal Power Commission as their June 7, 1954 price. In every instance the Commission in writing accepted such filing and advised the producer involved to that effect. All of this is well-known to Phillips because the Regulations required the producers to serve Phillips with copies of their filings where Phillips was the purchaser.

The foregoing demonstrates that, even if the Federal Power Commission is ultimately held to have jurisdiction over wellhead sales of gas which ultimately crosses a state line and it is also held that such sales are not covered by the production and gathering exemption, the fact remains that there is no conflict between the Regulations of the Federal Power Commission and Order No. 26096 insofar as such sales are concerned. Furthermore a decision in these cases that Order No. 26096 is invalid as applied to wellhead sales would still leave 9.8262 cents as the price applicable to such sales under the Regulations of the Federal Power Commission. It is therefore obvious that this appeal can in fact accomplish nothing.

The wellhead portion of Order No. 26096 is, except for the amount of the minimum price, identical to that order fixing a minimum price for sales of gas at the wellhead in the Guymon-Hugoton Field of Oklahoma which was upheld by this Court in the case of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 71 Sup. Ct. 215 (1950). This Court held in that case that it is undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas and that the minimum wellhead price order of the Oklahoma Corporation Commission there under consideration was lawful since it was substantially related to a legitimate end sought to be attained. This Court then held the minimum wellhead price valid stating at page 220:

> "Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause."

The action which Phillips now asks this Court to take would require that the *Cities Service* case be overruled, a step which this Court did not take in its original decisions in this case and its companion cases. This Court found merely that the *Cities Service* case was not applicable to this case. The *Cities Service* case did not apply here because sales of residue gas at the outlets of gasoline plants after production, gathering and processing had ceased were all that were here involved. Now when Phillips is attempting to enlarge the issues and to strike down that por-

tion of Order No. 26096 dealing with a minimum price for natural gas sold at the wellhead, the *Cities Service* case stands squarely in its path proclaiming that the wellhead portion of Order No. 26096 is a proper exercise of the State of Oklahoma's police power legitimately directed toward the conservation of one of its precious natural resources.

If this Court should overrule the *Cities Service* case such action would seriously jeopardize the power of the State of Oklahoma to take reasonable measures for the conservation of its valuable resource, natural gas. The position which Phillips now takes, if upheld by this Court, might also, through an extension of the rule stated in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 74 Sup. Ct. 396 (1954), place in jeopardy the gross production tax which the State of Oklahoma levies upon the production of natural gas within the State of Oklahoma.

Proposition II.

The position previously taken by Phillips with respect to this litigation and to Order No. 26096 estops Phillips from urging the issues which it now seeks to raise and such issues are accordingly not properly raised.

Order No. 26096 follows virtually verbatim the form of order which Phillips prepared and submitted to the Oklahoma Corporation Commission. The substantial role which Phillips played in the hearings before the Oklahoma Corporation Commission is described in the dissenting opinion in the original appeal of these cases to the Oklahoma Su-

preme Court, *Natural Gas Pipeline Co.* v. *Corporation Commission*, 272 P.2d 425 (Okla., 1954), where at page 437 it was noted:

> "The record reveals that before the last of the protracted series of hearings in this case the Commission, through its Chairman and its attorney, expressed grave doubt, or at least serious misgivings, as to whether a price-fixing order for anything but raw gas at the wellhead could be legally or constitutionally justified as a conservation measure. This makes it doubly surprising and somewhat imponderable to find that after delaying its decision several days after the last hearing, the Commission, on the basis *of the weak and biased evidence presented by no other company than Phillips, signed substantially the same kind and form of order that Phillips' attorneys had previously drawn and exhibited to the Commission earlier in the hearings*" (Emphasis ours).

The position Phillips took in the hearings can be appreciated by noting that its suggested form of order was followed by the Oklahoma Corporation Commission. Phillips cannot, now that it is dissatisfied therewith, assail the results of its own action. This Court stated the applicable rule in *United Fuel Gas Co.* v. *R.R. Commission of Ky.*, 278 U.S. 300, 307-308, 49 Sup. Ct. 150, 152 (1929), as follows:

> "But this objection, and that as well to the constitutionality, on state grounds, of the statute creating the commission and defining its powers, are not available to appellants in the present suit. It is the rule of this court, consistently applied, that one who has invoked action by state courts or authorities under state statutes may not later, when dissatisfied with the result, assail their action on the theory that the statutes

under which the action was taken offend against the Constitution of the United States. *Wall* v. *Parrot Silver & Copper Co.*, 244 U.S. 407, 37 S. Ct. 609, 61 L. Ed. 1229; *Electric Co.* v. *Dow*, 166 U.S. 489, 17 S. Ct. 645, 41 L. Ed. 1088; *Eustis* v. *Bolles*, 150 U.S. 361, 14 S. Ct. 131, 37 L. Ed. 1111; *Hurley* v. *Comm. of Fisheries*, 257 U.S. 223, 42 S. Ct. 83, 66 L. Ed. 206; *St. Louis Malleable Casting Co.* v. *George C. Prendergast Co.*, 260 U.S. 469, 43 S. Ct. 178, 67 L. Ed. 351. Upon like principle we think that appellants who have procured action by a state commission under a state statute may not assail that action in a federal court of equity on the ground that that statute, or the one creating the commission, is void under the State Constitution."

The record shows that when the original appellants in these cases took their appeals to the Oklahoma Supreme Court and then to this Court in an attack on that portion of Order No. 26096 which fixed a minimum price for sales of residue gas to those appellants, Phillips fought to establish the constitutionality of the questioned portion of the order. During these appeals all parties, including Phillips, agreed that the case of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 71 Sup. Ct. 215 (1950), established conclusively the authority of the Oklahoma Corporation Commission to issue an order fixing a minimum price at the wellhead for gas and Phillips used this unquestioned fact as a basis from which, by arguments which this Court found unpersuasive, to reason that the Oklahoma Corporation Commission also had authority to fix a minimum price for sales of residue gas made directly into an interstate pipeline after production, gathering and processing had ceased. For example Phillips at page 12 of its Motion to

Dismiss in Cases Nos. 320, 321 and 322 (October Term, 1954) states:

> "Thus, what was said by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma*, 340 U.S. 190, in regard to the validity of the 7¢ order under the Commerce clause of the Federal Constitution is equally applicable and conclusive in this case and leaves no room for further argument."

The *Cities Service* case did not apply in the original appeals in these cases because the sales of residue gas to the original appellants were all that were involved. The *Cities Service* case is controlling of the issues as to the wellhead portion of Order No. 26096 which Phillips here seeks to raise; yet Phillips now wishes to withdraw entirely from the uncontested basic premise upon which it tried to fashion a defense for the residue portion of Order No. 26096. Likewise Phillips used other arguments in the original appeals in these cases which, while inapplicable to the residue sales then being considered, are applicable and persuasive as to the wellhead portion of the Order which Phillips now seeks to raise in issue. For example, in its Jurisdictional Statement (October Term, 1956) Phillips states that the Oklahoma Supreme Court has ignored completely the decision of this Court in *Phillips Petroleum Co.* v. *Wis.*, 347 U.S. 672, 74 Sup. Ct. 794 (1954). Phillips' own arguments made on former appeals when applied to the wellhead portion of Order No. 26096 ably refute such a contention. Phillips, in its Motion to Dismiss in Cases Nos. 320, 321 and 322 (October Term, 1954) stated at page 16:

"This Court in *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672, (pending on petitions for rehearing) held that sales of gas for resale in interstate commerce by producers and gatherers are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. The Court, however, did not in that case in any way take from or limit the recognized jurisdiction and authority of the states to regulate the physical production of gas in the interest of conservation or of any other consideration of legitimate local concern.

"As recognized by this Court in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma*, 340 U.S. 190, the Oklahoma minimum gas price orders constitute an authorized regulation of production by the state. Although the orders may affect the price of the gas, they are a regulation of production and not a regulation of the sale.

"Being a valid regulation of production by the state, then under Section 1b of the Natural Gas Act and under the holding of this Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498; *Interstate Natural Gas Co.* v. *Federal Power Commission*; 331 U.S. 682; *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, it is unaffected by the Natural Gas Act or any regulation of the Federal Power Commission thereunder.

"This is particularly true in the absence of any conflicting regulation by the Federal Power Commission under the Natural Gas Act, as is presently the case. There is in effect no order or regulation by the Federal Power Commission which would indicate that it will not allow producers and purchasers of gas affected by the 9.8262¢ minimum price order to include in their

rate base the minimum price so prescribed by such order."

When Phillips elected to participate in the original appeals in these cases as an appellee defending the validity of the residue portion of Order No. 26096, it thereby waived any and all objections which it might have had to Order No. 26096 or any part thereof. See *Wall* v. *Parrot Silver & Copper Co.*, 244 U.S. 407, 37 Sup. Ct. 609 (1917). Phillips who chose to defend Order No. 26096 now attacks it. This it cannot do for Phillips cannot rely on the order for one purpose and then assail it for another in the same proceeding. See *Hurley* v. *Commissioner of Fisheries of Va.*; 257 U.S. 223, 42 Sup. Ct. 83 (1921).

In summary, Phillips is now attacking the validity of Order No. 26096, (1) after it submitted to the Oklahoma Corporation Commission the form of order which was finally adopted as Order No. 26096; (2) after it has fought to sustain the validity of said Order against an attack on the residue portion thereof in the original appeals to the Oklahoma Supreme Court, and then to this Court; and (3) after it has presented arguments during said original appeals which, it is submitted, effectively concede that all parties were agreed as to the validity of that portion of Order No. 26096 which Phillips now attacks. We submit that Phillips cannot at this late date so reverse itself and that Phillips by its actions has waived all objections to Order No. 26096. Inasmuch as Phillips is estopped from questioning the validity of Order No. 26096, this appeal presents no questions which have been properly raised and we respectfully submit that it should be dismissed. See

also *Shepard* v. *Barron*, 194 U.S. 553, 24 Sup. Ct. 737 (1904); *St. Louis Malleable Casting Co.* v. *George C. Prendergast Construction Co.*, 260 U.S. 469, 43 Sup. Ct. 178 (1923).

Proposition III.

The Orders of the Oklahoma Supreme Court from which Phillips seeks to appeal rest on an adequate non-federal basis.

As has been previously pointed out, the only question which is now before this Court is whether the Oklahoma Supreme Court correctly followed the orders of reversal of this Court. This Court by its orders of April 11 and April 18, 1955, invalidated that portion of Order No. 26096 which fixed a minimum price for the original appellants' purchases of residue gas. This must necessarily be the effect of this Court's orders, since this Court had no other issues before it. After this Court's orders it remained for the Supreme Court of Oklahoma to follow the orders of this Court regarding residue sales and to determine the purely state question of whether the invalidation of Order No. 26096 as to sales of residue gas required that the wellhead portion of Order No. 26096 also be declared to be invalid. The Oklahoma Supreme Court fully complied with this Court's orders and held invalid the residue portion of Order No. 26096, and it also held in effect that the various portions of Order No. 26096 were separable and that the decision invalidating the residue portion of Order No. 26096 did not invalidate the wellhead portion of the Order. Such orders gave full effect to the decision of this Court while at the same time effectuating the determination of the

Oklahoma Supreme Court with respect to the purely state question of the separability of Order No. 26096. This Court held that the question of the separability of a state statute is one for the state court in the case of *Dorchy* v. *State of Kansas*, 264 U.S. 286, 44 Sup. Ct. 323, 325 (1924), where it stated:

> "The task of determining the intention of the state legislature in this respect, like the usual function of interpreting a state statute, rests primarily upon the state court. Its decision as to the severability of a provision is conclusive upon this Court."

In *Aero Mayflower Transit Co.* v. *Board of R.R. Commissioners of State of Mont.*, 332 U.S. 495, 499-500, 68 Sup. Ct. 167, 169, 92 L. Ed. 99 (1947), this Court pointed out:

> "The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given to state statutes by the state courts" (Citing many cases).

Thus we submit that the determination of the Oklahoma Supreme Court that this Court's order invalidating the residue portion of Order No. 26096 did not require the invalidation of the entire order is not subject to review by this Court, since such determination rests on an adequate non-federal basis.

CONCLUSION

We respectfully submit, therefore, that for the reasons above set forth this appeal of Phillips should be dismissed.

Respectfully submitted,

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May, 1957.

APPENDIX

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

PANHANDLE EASTERN PIPE LINE COMPANY, *Plaintiff in Error*	)	
v.	)	No. 35,734
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error*	)	

ORDER

NOW on this ..... day of June, 1955, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this court,

NOW, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the

appeals to this court and the Supreme Court of the United States, be and the same is hereby reversed, set aside and held for naught insofar as sales of residue gas by Phillips Petroleum Company and its successors, to Panhandle Eastern Pipe Line Company under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its cost as set forth in the mandate of the Supreme Court of the United States in the amount of $100.00.

Chief Justice